

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF PUERTO RICO

3 In Re:) Docket No. 3:17-BK-3283 (LTS)

4)

5) PROMESA Title III

6 The Financial Oversight and)

7 Management Board for)

8 Puerto Rico,) (Jointly Administered)

9)

10 *as representative of*)

11)

12 The Commonwealth of)

13 Puerto Rico, *et al.*) November 1, 2021

14)

15 Debtors,)

16 In Re:) Docket No. 3:17-BK-3566 (LTS)

17)

18) PROMESA Title III

19 The Financial Oversight and)

20 Management Board for)

21 Puerto Rico,) (Jointly Administered)

22)

23 *as representative of*)

24)

25 The Employees Retirement)

System of the Government)

of the Commonwealth of)

Puerto Rico,)

Debtors,)

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3 In Re:) Docket No. 3:19-BK-5523 (LTS)
4)
5) PROMESA Title III
6 The Financial Oversight and)
7 Management Board for)
8 Puerto Rico,) (Jointly Administered)
9)
10 *as representative of*)
11)
12 The Puerto Rico Public)
13 Buildings Authority,)
14)
15 Debtors,)

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12 MOTION HEARING
13 BEFORE THE HONORABLE U.S. DISTRICT JUDGE LAURA TAYLOR SWAIN
14 UNITED STATES DISTRICT COURT JUDGE
15 AND THE HONORABLE U.S. MAGISTRATE JUDGE JUDITH GAIL DEIN
16 UNITED STATES DISTRICT COURT JUDGE
17

18 APPEARANCES:
19
20 ALL PARTIES APPEARING BY VIDEOCONFERENCE AND TELEPHONICALLY
21 For The Commonwealth
22 of Puerto Rico, *et al.*: Mr. Martin J. Bienenstock, PHV
23 Mr. Brian S. Rosen, PHV
24 Mr. Michael A. Firestein, PHV
25 Ms. Margaret A. Dale, PHV
Mr. Michael T. Mervis, PHV
Mr. Elliot Stevens, PHV
Mr. Lary Rappaport, PHV

1	APPEARANCES, Continued:	
2		
3	For Puerto Rico Fiscal	
4	Agency and Financial	
5	Advisory Authority and	
6	the Governor of	
7	Puerto Rico:	Mr. John Rapisardi, PHV
8		Mr. Peter Friedman, PHV
9		
10	For The Official	
11	Committee of Retired	
12	Employees:	Mr. Robert Gordon, PHV
13		
14	For Cantor-Katz	
15	Collateral Monitor,	
16	LLC:	Mr. Thomas L. Mott, PHV
17		Mr. Peter J. Amend, PHV
18		Ms. Elizabeth Curran, PHV
19		Mr. Douglas Mintz, PHV
20		
21	For the DRA Parties	
22	and AmeriNational	
23	Community Services:	Mr. Arturo J. Garcia Sola, Esq.
24		Mr. Nayuan Zouairabani Trinidad, Esq.
25		Mr. Alejandro Cepeda Diaz, Esq.
26		
27	For Peter Hein:	Mr. Peter Hein, Pro Se
28		
29	For Suiza Dairy:	Mr. Rafael Gonzalez Valiente, Esq.
30		
31	For Finca Matilde:	Mr. Eduardo Capdevila, Esq.
32		
33	For the Creditors	
34	Committee:	Mr. Luc Despins, PHV
35		
36	For PFZ:	Mr. David Carrion Baralt, Esq.
37		
38	For Assured:	Mr. William J. Natbony, PHV
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1 APPEARANCES Continued:

2 Also present:

3 Honorable Bankruptcy Judge J. Barbara Houser, Mediation
4 Team Leader

5 Honorable Circuit Judge Thomas J. Ambro

6 Honorable District Judge Nancy F. Atlas

7 Honorable Bankruptcy Judge Roberta A. Colton

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CAT.

1	I N D E X	
2	WITNESSES:	PAGE
3	None.	
4		
5	EXHIBITS:	
6	None.	
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1 San Juan, Puerto Rico

2 November 1, 2021

3 At or about 9:43 AM

4 * * *

5 THE COURT: Good morning. This is Judge Swain
6 speaking.

7 Ms. Tacoronte, can you hear me in San Juan?

8 COURTROOM DEPUTY: Good morning, Your Honor. We can
9 hear you.

10 THE COURT: Very well. Good morning.

11 Would you please call the case?

12 COURTROOM DEPUTY: Absolutely, Your Honor.

13 The United States District Court for the District of
14 Puerto Rico is now in session. The Honorable Laura Taylor
15 Swain presiding. Also present the Honorable Magistrate Judge
16 Judith Dein. God save the United States of America and this
17 Honorable Court.

18 *In re: The Financial Oversight and Management Board*
19 *for Puerto Rico, as representative of the Commonwealth of*
20 *Puerto Rico et al.*, PROMESA Title III, Case No. 2017-BK-3283,
21 for pretrial conference.

22 THE COURT: Thank you, Ms. Tacoronte.

23 Buenos dias to all. Please turn your cameras on for
24 these introductory remarks and instructions, but leave your
25 microphone muted.

1 Welcome Counsel, parties in interest, and members of
2 the public and press. I also wish to thank the judges of our
3 mediation team, some of whom are participating today on zoom
4 and listening through AT&T, including Judges Barbara Houser,
5 Thomas Ambro, Nancy Atlas and Roberta Colton. Without their
6 tireless efforts over the past several years, we would not be
7 where we are today, on the threshold of a hearing as to
8 whether the Plan of Adjustment proposed for the Commonwealth,
9 ERS, and PBA can be confirmed. I thank them sincerely for
10 their work, which continues.

11 To ensure the orderly operation of today's virtual
12 conference, once we turn to our Agenda items, all parties
13 appearing by Zoom must mute their microphones when they are
14 not speaking, and turn off their video cameras if they are not
15 directly involved in the presentation or argument. When you
16 need to speak, turn your camera on, and unmute your microphone
17 on the Zoom screen.

18 I remind everyone that consistent with court and
19 judicial conference policies, and the orders that have been
20 issued, no recording or retransmission of the hearing is
21 permitted by anyone, including but not limited to the parties,
22 members of the public, and members of the press. Violations
23 of this rule may be punished with sanctions.

24 I will be calling on each speaker during the
25 proceeding. When I do, please turn your camera on, unmute

1 yourself, and identify yourself by name for clarity of the
2 record. If you wish to be heard when I invite speakers not
3 specifically listed on the Agenda to respond or make remarks,
4 please turn your camera on and use the "raise hand" feature at
5 the appropriate time. The "raise hand" feature can be
6 accessed by selecting the reactions icon in the tool bar
7 located at the bottom of your Zoom screen. I'll call on the
8 speakers one by one. After you have finished speaking, you
9 should select the "lower hand" feature on the tool bar.

10 Please don't interrupt each other or me during the
11 hearing. If we interrupt each other, it is difficult to
12 create an accurate transcript of the proceeding, but having
13 said that, I apologize in advance for breaking the rule,
14 because I may interrupt if I have questions or if I need to do
15 so to manage the conference efficiently. If anyone has
16 difficulty hearing me or another participant, please use the
17 "raise hand" feature immediately.

18 The Agenda, which was filed at Docket Entry No. 18990
19 in Case No. 17-3283 is available to the public at no cost on
20 Prime Clerk for those who are interested. I encourage each
21 speaker to keep track of his or her own time for the timed
22 portions of the Agenda. The Court will also be keeping track
23 of the time allocations, and will alert each speaker when
24 there are two minutes remaining with one buzz and when time is
25 up, with two buzzes. Here's an example of the buzzer sound.

1 (Sound played.)

2 THE COURT: If your allocation is two minutes or
3 less, you'll just hear the final two buzzes.

4 If we need to take a break, I will direct everyone on
5 the AT&T line to disconnect and dial back in at a specified
6 time. This morning's session will go until ten minutes to
7 1:00, which is 12:50 PM. We'll have a ten-minute break at
8 about 11:15. We'll resume if necessary after the midday
9 break, going from 2:10 to 5:00, and, again, there'll be a
10 ten-minute break in the afternoon at about 3:30.

11 I'd ask now that all who are not involved in the
12 first Agenda item, turn your cameras off now. Thank you.

13 The first item on the Agenda is the debtors' motion
14 in limine for an order excluding the expert testimony of
15 Lizette Martinez. I have scheduled to speak in relation to
16 this matter Mr. Stevens, representing the Oversight Board;
17 Mr. Zouairabani Trinidad, representing the DRA Servicer;
18 Mr. Mintz and/or Mr. Amend, representing the DRA Collateral
19 Monitor; and Mr. Stevens, who will come back for a reply. So
20 the first speaker is Mr. Stevens, for the Oversight Board, who
21 I have scheduled for ten minutes.

22 Good morning, Mr. Stevens.

23 MR. STEVENS: Good morning, Your Honor. My name is
24 Elliot Stevens of Proskauer Rose. I'm appearing today on
25 behalf of the Oversight Board as the debtors' representative

1 in these Title III cases.

2 As Your Honor identified, this is the Oversight
3 Board's Motion in Limine to exclude the expert testimony of
4 Ms. Lizette Martinez, upon which the DRA parties propose to
5 rely in connection with their confirmation objection. Your
6 Honor, Ms. Martinez' testimony, as disclosed by her expert
7 report, would revolve around essentially two different topics.
8 The first one is tracing and calculating the amounts of Act
9 30-31 revenues that the Commonwealth collected between the
10 years 2015 to 2020, and that the Commonwealth either retained
11 at the Commonwealth level or that the Commonwealth then
12 transferred to HTA during that time period. Ms. Martinez -- a
13 second topic, Your Honor, would be analyzing how HTA
14 potentially used revenues that were transferred to it during
15 that time period.

16 Your Honor, the motion asks the Court to enter an
17 order excluding Ms. Martinez' testimony on the basis it is
18 irrelevant to the Confirmation Plan. I'm going to discuss
19 that as we go forward, Your Honor.

20 Briefly put, the legal standard here is that to be
21 admissible under Rule 402 of the Federal Rules of Evidence,
22 evidence must be relevant. It can't be irrelevant. Under
23 Rule 401, evidence is only relevant if it tends to make a fact
24 which is of consequence to the determination of the action
25 more or less probable. Here, the relevant action is plan

1 confirmation proceedings. Under -- further, as this is expert
2 testimony, Rule 702 applies and requires, among other things,
3 that the evidence help the trier of fact understand the
4 evidence or a determine a fact at issue.

5 Your Honor, we submit, as discussed in greater detail
6 in our motion in reply, that Ms. Martinez' testimony does not
7 satisfy the standards for relevance, and can't be admitted.
8 We submit this is true, because it doesn't go to any fact
9 which is relevant to whether the Plan should be confirmed or
10 not.

11 With respect to Ms. Martinez' first topic of
12 testimony, the amount of revenues the Commonwealth either
13 retained or transferred to HTA, this is relevant solely to
14 quantifying one of two things: Either the value of the DRA
15 parties' asserted security interest in revenues retained by
16 the Commonwealth, or to quantify the size of their claim,
17 their asserted administrative expense claim against the
18 Commonwealth based on retention of its revenues. Indeed, the
19 DRA parties essentially said as much in their response to the
20 Oversight Board's evidentiary objection in connection with
21 their administrative expense motion, where they agreed
22 Ms. Martinez' testimony was only relevant to calculate the
23 size of the administrative expense claim should one exist.

24 As of course Your Honor is aware, just this Friday,
25 however, this Court held two things: The DRA parties did not

1 have any security interest in revenues retained by the
2 Commonwealth, and as a result of that, and for other reasons,
3 the DRA parties did not have a valid administrative expense
4 claim against the Commonwealth. That's ECF no. 18892 in the
5 Commonwealth's case.

6 Your Honor, we submit that, simply put, Ms. Martinez'
7 testimony, because it relates solely to quantifying claims and
8 security interests that this Court has held do not exist, it
9 cannot be relevant to Plan confirmation, and thus should be
10 excluded.

11 Your Honor, the DRA parties in their opposition to
12 the motion in limine put forward a couple of arguments which
13 seek to disagree with that. I'd like to quickly discuss the
14 main ones, Your Honor. These are further discussed our Reply.

15 First, Your Honor, in their opposition to the motion
16 in limine, the DRA parties argue that the Court should lean in
17 favor of admitting expert testimony in a bench trial. We
18 submit, however, Your Honor, this is wrong in this context.
19 None of the DRA parties' cases relate or suggest that
20 irrelevant expert testimony should be admitted. In fact, they
21 all relate to the reliability prong of the *Daubert* inquiry.
22 They don't relate to relevance. As a result, nothing suggests
23 that irrelevant expert testimony should be admitted, and
24 that's precisely what we suggest Ms. Martinez' testimony is.

25 If anything, Your Honor, and as cited in our motion

1 and in our reply brief, the First Circuit Rule indicates that
2 a higher relevancy standard exists for expert testimony,
3 because it must satisfy Rule 401, the general rule of
4 relevance, as well the Rule 702 requirement that it has to be
5 helpful to the trier of fact. Nonetheless, Your Honor, under
6 any standard, as I mentioned a minute ago, evidence that only
7 goes to the quantification of claims and liens that the Court
8 has held do not exist cannot be relevant.

9 Further, Your Honor, the DRA parties argue
10 specifically that Ms. Martinez' testimony is relevant to plan
11 confirmation under PROMESA section 314(b)(3), which provides
12 that the Court shall confirm the plan if the debtor is not
13 prohibited by law from taking any action necessary to carry
14 out the plan.

15 DRA parties argue that the debtor is prohibited by
16 law from retaining Act 30-31 revenues on a go-forward basis,
17 and yet the Plan proposes for the debtor to do just that, and
18 that, therefore, the Plan violates 314(b)(3). Your Honor, our
19 response to the merits of that is contained in our
20 confirmation briefs and our reply brief. And I won't get into
21 that here, but we submit that this doesn't make Ms. Martinez'
22 testimony relevant for a couple of different reasons.

23 Notably, as a preliminary point, in their 70 page
24 long objection to the confirmation of the Plan, the DRA
25 parties do not cite Ms. Martinez' testimony or her report

1 anywhere in connection with their 314(b)(3) legal argument.
2 Indeed, the DRA parties don't actually cite Ms. Martinez'
3 report anywhere in their legal arguments. It's solely
4 mentioned in a background paragraph.

5 We would submit that this tends to indicate the DRA
6 parties themselves didn't seem to think that her opinions, as
7 disclosed in her report, were greatly relevant to their
8 objection since they didn't rely on them there. More
9 fundamentally though, Your Honor, under section 314(b)(3), it
10 only prohibits future -- the Plan from requiring the debtor to
11 engage in future prohibitions of the law. That's why its
12 wording is clear about it. It stops the Plan from providing
13 the debtor take actions that are prohibited by law that are
14 necessary to carry out the Plan or execute the Plan.

15 Similarly, jurisprudence cited in our Reply makes
16 clear that point, that -- it talks about future actions and
17 doesn't stop the discharge of past claims. Ms. Martinez'
18 testimony, however, relates solely to the period of time of
19 2015 to 2020, which is the past. It cannot tell us anything
20 about whether the Plan requires the debtor to take actions
21 that are prohibited by law in the future. As a result of
22 further commitments, Ms. Martinez' testimony can't be ruled
23 relevant under 314(b)(3) --

24 THE COURT: Mr. Stevens --

25 MR. STEVENS: Yes, Your Honor.

1 THE COURT: -- I haven't yet ruled on your contention
2 regarding the application of 314(b)(3), and so to the extent
3 that DRA argues that the past application and tracing of the
4 funds is bound up with and relevant to its 314(b)(3) argument,
5 wouldn't it be inappropriate for me to resolve this motion
6 based on an assumption as to -- or based on your argument as
7 to how the merits of the 314(b)(3) issue will come out?

8 MR. STEVENS: Thank you, Your Honor. I would submit
9 three things in response to that I think. First, we would
10 submit the language is very clear, and that it's not really
11 deciding a particularly contentious point. However, even
12 setting aside our argument --

13 (Sound played.)

14 MR. STEVENS: -- as to the future violation point, we
15 submit Ms. Martinez' testimony is still irrelevant even if
16 Your Honor didn't want to get into that in the context of this
17 motion. Specifically, we would argue that the DRA parties'
18 opposition of the motion in limine and, indeed, their
19 objection to the Plan make clear their 314(b)(3) arguments,
20 including to the extent it relates to past violations,
21 including theirs, entirely hinges on the existence of a
22 security interest against the Commonwealth.

23 They talk about how it violates the Takings Clause if
24 the Plan were to take away their property rights, for example.
25 It hinges on their security interest. But as I previously

1 mentioned, and as you're aware, Your Honor, the Court has held
2 they don't have such a security interest.

3 And further, Your Honor, we would also submit that
4 Ms. Martinez' testimony is -- relates solely to the
5 quantification. It's talking about amounts. It's talking
6 about how much the Commonwealth retained or transferred. A
7 violation of the law is a violation of the law, whether it
8 relates to a hundred dollars or a billion dollars, and,
9 therefore, Ms. Martinez' testimony doesn't really matter as to
10 whether retention is or is not a violation of the law.

11 So that would be my response to your question, Your
12 Honor.

13 Moving on, Your Honor, to the second topic quickly
14 before my time runs out, Ms. Martinez -- the second topic
15 relates to HTA's potential use of money that was transferred
16 to it and how HTA spent that money. Your Honor, we simply
17 submit that this clearly isn't relevant to the Commonwealth
18 Plan, which doesn't relate to HTA, cover HTA's debts, or cover
19 its property.

20 The DRA's sole response is to say it's background
21 evidence. However, Your Honor, the DRA parties and the case
22 law makes clear that background evidence must itself be
23 relevant to some facts that are at issue to be admissible, and
24 evidence as to how a legally separate entity not covered by
25 the Plan used revenues that were transferred to it cannot be

1 relevant and isn't relevant. And the DRA parties don't put
2 forward a reason as to why it would be relevant to whether the
3 Commonwealth Plan should be confirmed.

4 (Sound played.)

5 MR. STEVENS: Your Honor, unless you have any further
6 questions, I will cede the virtual microphone to the DRA
7 parties' counsel.

8 THE COURT: Thank you, Mr. Stevens.

9 We will now hear from the counsel for the servicer
10 for the DRA parties, Ms. Zouairabani, for 11 minutes.

11 MR. ZOUAIRABANI TRINIDAD: Good morning, Your Honor.
12 Attorney Nayuan Zouairabani from McConnell Valdes, LLC,
13 representing AmeriNational Community Services, LLC. I am
14 joined by my co-counsel Peter Amend of Schulte Roth & Zabel,
15 representing Cantor-Katz Collateral Monitor, jointly referred
16 to as the DRA parties.

17 COURT REPORTER: I'm sorry, Your Honor. This is the
18 court reporter. I'm sorry to interrupt, but I'm getting a
19 duplicate, a repetition of the words coming through like
20 before we started.

21 THE COURT: So you're hearing an echo? Are you
22 hearing that when I speak, also?

23 COURT REPORTER: No. Only when other people speak.
24 I think it's coming out of the speakers in your courtroom,
25 into your mics, and I'm getting a repetition a second later.

1 THE COURT: That's not good. Let's see.

2 Mr. Zouairabani, obviously I have not started your time yet.

3 Would you say testing, one, two, three?

4 MR. ZOUAIRABANI TRINIDAD: Yes, Your Honor. Testing
5 one, two, three.

6 THE COURT: Are you hearing it now, Ms. Court
7 Reporter?

8 COURT REPORTER: I'm sorry. Could counsel repeat
9 that again? I don't know if it's just breaking up or it's a
10 repeat.

11 MR. ZOUAIRABANI TRINIDAD: Testing one, two, three.

12 COURT REPORTER: That's better. Thank you, Your
13 Honor.

14 THE COURT: Thank you.

15 Mr. Zouairabani, if you would just slow down a bit,
16 that would help me and perhaps the court reporter, also.

17 MR. ZOUAIRABANI TRINIDAD: Sure, Your Honor. Should
18 I start from the beginning?

19 THE COURT: Yes, please.

20 MR. ZOUAIRABANI TRINIDAD: Sure. Good morning, Your
21 Honor. Attorney Nayuan Zouairabani from McConnell Valdes,
22 LLC, representing AmeriNational Community Services, LLC. I am
23 joined by co-counsel Peter Amend of Schulte Roth & Zabel,
24 representing Cantor-Katz Collateral Monitor, LLC, jointly
25 referred to as the DRA Parties.

1 Your Honor, from the outset, I'd like to mention that
2 we can't lose sight that this is a motion in limine to exclude
3 an expert testimony in a bench trial on the confirmation of
4 the Commonwealth Plan. Law favors admission of expert
5 reports, particularly in bench trials, and excluding expert
6 testimony before the expert testifies at trial is disfavored.

7 COURT REPORTER: I'm sorry, Your Honor. I'm sorry,
8 Counsel. I'm still getting a repetition a second later. I'm
9 sorry.

10 THE COURT: It's nothing to be sorry about. It's
11 something that we need to fix.

12 So again, Mr. Zouairabani, I've stopped the clock on
13 you.

14 MR. ZOUAIRABANI TRINIDAD: Let me take my headphones
15 off. I don't know if that's the problem.

16 THE COURT: I tend to doubt it, but you can try.

17 MR. ZOUAIRABANI TRINIDAD: You let me know if this
18 works better.

19 COURT REPORTER: It's the same, Your Honor.

20 THE COURT: Let's see. Is it possible in my
21 courtroom to mute the sound in my courtroom -- which will make
22 it a little complicated for me to ask questions in the
23 dialogue, but let's try that. So will the controller in my
24 courtroom mute me now?

25 All right. They're going to mute me, and then I'm

1 going to ask Mr. Zouairabani to tell us what the weather is
2 like where he is there. So now I'm being muted, and then,
3 Mr. Zouairabani, talk about the weather.

4 MR. ZOUAIRABANI TRINIDAD: Your Honor, it's very nice
5 here. I think it's about 78 degrees, give or take.

6 COURT REPORTER: Thank you, Your Honor.

7 THE COURT: Was that better?

8 COURT REPORTER: Yes, Your Honor.

9 THE COURT: Okay. This is going to be complicated,
10 but that is what we will do.

11 All right. So, Mr. Zouairabani, you don't have to
12 repeat the introduction of Mr. Amend or the substance of your
13 argument that there should be a liberal admission for a bench
14 trial of expert testimony. I would like you to get, as soon
15 as possible, to the relevance of this particular testimony in
16 light of the decisions that I've made in the past couple of
17 days regarding claims by DRA.

18 Now I am going to start your time. About one minute
19 has elapsed, and I will have myself muted.

20 MR. ZOUAIRABANI TRINIDAD: Thank you, Your Honor.
21 I'm going to move quickly then to answer the question that
22 Your Honor posed concerning the relevancy issues that have
23 been raised by the FOMB.

24 In a nutshell, the FOMB asserts the report does not
25 affect whether the plan satisfied the confirmation

1 requirements under 314(b) of PROMESA. This is not proof. And
2 the report of Ms. Martinez' testimony are directly tied to at
3 least plan confirmation analysis. One of them is 314(b)(4).

4 And I'll just mention briefly, Your Honor, that we
5 are aware of the decision on Friday, still not final, and to
6 the extent that it may be relevant by the effective date,
7 that's an issue to consider. I would, however, like to
8 mention 314(b)(3). I'd like to spend some time there.

9 314(b)(3) requires the Commonwealth not to be
10 prohibited by law from taking any action necessary to carry
11 out the Plan. Now, the Plan suffers from an illegality
12 infirmity. A Constitutional Plan requires compliance with --
13 at least with the elements -- first, there needs to be a
14 proper activation of the clawback; and second is there needs
15 to be a proper distribution of the revenues under Puerto Rico
16 law. The Plan does neither.

17 Now, Mr. Stevens mentioned that Ms. Martinez was, in
18 our brief -- her report wasn't mentioned with regard to these
19 issues, but that is just a red herring. Her testimony and her
20 report are directly tied to 314(b)(3). Now, what the Plan
21 attempts to do is convert illegally clawed back funds, such as
22 the Act 30-31 incremental revenues, to property of the
23 Commonwealth, and then distribute these funds to the creditors
24 in violation to Article VI, Section 8 of the Constitution. It
25 does this by alleging that PROMESA preempts Puerto Rico Law,

1 Government, Commonwealth appropriations, and the clawback
2 thereof. You can see references to this at sections 2.1, 89.3
3 of the Plan, Exhibit K-3. You can also see it at the
4 Disclosure Statement, at 88 and 88 -- at 87 and 88.

5 In the absence of preemption, which the Court has not
6 determined has occurred, the only other option by which the
7 Commonwealth can retain these revenues is through compliance
8 with the constitutional clawback. Now, the report details the
9 flow of the Act 30-31 incremental revenues. It is a tranche
10 of funds that are subject to the constitutional clawback
11 requirements. And this will help the Court understand the
12 mechanics of how the Commonwealth -- this illegal clawback of
13 such revenues occurred, where these funds were distributed,
14 and for what they were used.

15 The report demonstrates that as far as the Act 30-31
16 incremental revenues are concerned, these funds were not being
17 used and distributed pursuant to the required priorities and
18 waterfall under the Puerto Rico law. Now, Mr. Stevens
19 mentioned that all of this was predicated on the DRA having a
20 security interest. Your Honor, that is plainly wrong. There
21 are various reasons why the DRA can still raise the matters,
22 on -- from lack of compliance with 314(b)(3). I'll stop.

23 THE COURT: Mr. Zouairabani, I have been --
24 apparently they're still finding some hearing interference in
25 San Juan. Do you have another device near you?

1 MR. ZOUAIRABANI TRINIDAD: I could try to call in,
2 Your Honor, through my phone.

3 THE COURT: We'd prefer that you didn't do that. So
4 there's no other computer playing this audio in the same room
5 as you?

6 MR. ZOUAIRABANI TRINIDAD: Not that I'm aware of,
7 Your Honor.

8 THE COURT: Okay. Would you try once again taking
9 your headphones out? I've stopped your clock again. So would
10 you tell us about your weather again?

11 MR. ZOUAIRABANI TRINIDAD: Yes. Again, sunny, 78
12 degrees.

13 THE COURT: Okay. San Juan, is that any better?
14 Ms. Tacoronte?

15 COURTROOM DEPUTY: Your Honor, good morning. This is
16 Carmen. We can hear you fine, so we can infer that the
17 problem is not your microphone. So if counsel could
18 doublecheck and lower his microphone a little, you know, the
19 sound, that would be helpful maybe, because it's only him.

20 THE COURT: Ms. Tacoronte, I think I was muted for
21 the past three minutes while he was talking, but then you
22 wrote and said that there was still a problem. So I guess it
23 does sound like it's on his end.

24 COURTROOM DEPUTY: Your Honor, can you confirm that
25 all the mics were muted from your courtroom?

1 THE COURT: Let's see. I am told all the mics are
2 muted from my courtroom, but it is -- actually, it's been
3 suggested that we take Mr. Zouairabani up on his offer to call
4 in so that he can use phone audio and I can still see him with
5 his camera on. So to do that, so he can just mute his audio
6 with the connection that he has, and then dial in with his
7 phone.

8 What are the last four digits of the phone number
9 you'll be calling from?

10 MR. ZOUAIRABANI TRINIDAD: It will be 6240, Your
11 Honor.

12 THE COURT: Okay. Fine. We'll hold on until we get
13 you on audio that way. Thank you.

14 COURTROOM DEPUTY: Your Honor, this is the courtroom
15 deputy again. I'm sorry to interrupt.

16 THE COURT: Yes.

17 COURTROOM DEPUTY: Can Your Honor ask counsel to
18 confirm whether all their mics are muted while counsel is
19 speaking?

20 THE COURT: Yes. Counsel, make sure that all of your
21 microphones are muted when anyone else is speaking. It looks
22 as though that is what is happening looking at the chart.

23 This room is not muted, and the Puerto Rico courtroom
24 is not muted.

25 MR. ZOUAIRABANI TRINIDAD: Your Honor, this is

1 Attorney Nayuan Zouairabani. Can you hear me well over there?

2 THE COURT: Ms. Tacoronte, can you hear clearly in
3 San Juan?

4 COURT REPORTER: Your Honor, I'm sorry. This is Amy.
5 There's still an echo.

6 COURTROOM DEPUTY: I can hear the echo as well when
7 we speak, Your Honor, so apparently one of your -- I can hear
8 you well, but whenever Amy speaks, I hear her. And my mics
9 are muted while she's speaking.

10 THE COURT: Which means you're hearing her through my
11 mic?

12 COURTROOM DEPUTY: Yes, that could be it.

13 THE COURT: I'm just trying to figure out what you
14 want me to do.

15 COURT REPORTER: Your Honor, this is Amy. I believe
16 what's happening is the audio is coming through -- if everyone
17 else is muted, then it would have to be coming through New
18 York's speakers into an open mic and feeding back into the
19 system as an echo I think.

20 THE COURT: All right. Were you hearing that echo
21 while our microphones were muted in New York, which was the
22 bulk of Mr. Zouairabani's remarks before we stopped again?

23 COURT REPORTER: I've heard it since we started, yes,
24 including the first speaker.

25 THE COURT: Then it isn't -- just to confirm again,

1 Sarah, were all of our microphones muted? There was one that
2 was not muted? Okay. Hold on a second. We're checking
3 again.

4 I'm so sorry, everyone, but it's best we get these
5 technical issues worked out today. Better today than next
6 week when we're on trial. So we have to -- one of our
7 technical people is coming up to the courtroom here in New
8 York, so thank you all for your patience. We'll get started
9 again as quickly as we can.

10 Good morning again, everyone. Again, apologies for
11 the technical difficulties, which we think that we have
12 resolved.

13 So, Mr. Zouairabani, would you please resume? You
14 were talking about the relationship between the Martinez
15 evidence and the 314(b)(3) clawback argument, and I believe I
16 heard you say that, in the absence of preemption, the
17 constitutional clawback argument is relevant, or clawback
18 misapplication argument is relevant to the 314(b)(3) position
19 of the DRA parties.

20 I am now going to restart your time. I have four and
21 a half minutes of your time elapsed. So please continue now.

22 I'm not hearing you. Are you on your phone?

23 MR. ZOUAIRABANI TRINIDAD: Your Honor, can you hear
24 me now?

25 THE COURT: Now I can hear you. Now I'll start your

1 clock.

2 MR. ZOUAIRABANI TRINIDAD: Okay. Sure. Thank you.
3 And, Your Honor, you're absolutely correct. That is our
4 position in a nutshell.

5 So Mr. Stevens mentioned during his argumentation
6 that Ms. Martinez' testimony hinges on the existence of a
7 security interest, and that -- but that is not correct. The
8 DRA parties can still assert violations of Rule 314(b) of the
9 Plan.

10 The FOMB might forget that the DRA parties are a
11 creditor of the Commonwealth and are a creditor of PBA with
12 regard to this Plan. The DRA has claims at classes 12, 14 --
13 both of them relate to PBA -- class 40, which has 2012 GOs,
14 and class 59.

15 As a creditor on the Plan, and under section 1109, it
16 is definitely a party at interest who has standing and a right
17 to question whether the Plan is confirmable or not under all
18 the provisions of section 314. So it is not limited to
19 whether there was a decision on whether there was a security
20 interest, not a security interest, or an admin -- that is an
21 extreme oversimplification.

22 At the end of the day, the Court needs to make an
23 independent inquiry on whether this Plan satisfies all the
24 confirmation requirements under 314(b) of PROMESA, and the
25 Bankruptcy Code. And as Your Honor mentioned, this all goes

1 back to the same issue.

2 If preemption, which is an issue that has not been
3 decided, were not to apply here, the only other way that the
4 Commonwealth can retain the revenues would be through a
5 clawback. And Ms. Martinez' testimony and her report goes to
6 show that -- at least one of the elements of the clawback,
7 which is distribution, and how the clawback revenues were
8 distributed and funded and used for, becomes extremely
9 relevant as they go to the issue of whether the priorities
10 have been satisfied. So this is squarely, squarely relevant
11 to the section 314(b)(3) issues with regard to the Plan.

12 And in sum, Your Honor, the motion in limine -- and
13 we've heard from the FOMB, and we've seen the motion in limine
14 and their reply. It is premised exclusively on the FOMB's
15 belief that their view of the world is right with regards to
16 preemption, and their legal position on preemption and
17 clawback are correct. These issues are not proper to be
18 brought in a motion in limine, Your Honor.

19 Then the motion in limine, we only need to address
20 whether the facts of the expert -- the expert complies with
21 Rule 702 in order to provide expert testimony, which no one
22 has challenged Ms. Martinez' qualifications. No one has
23 challenged her methodology, her assertion, or that she's
24 applied it correctly. There are no *Daubert* issues with regard
25 to Ms. Martinez.

1 And regarding the relevancy objections, which are the
2 only thing that they've made -- we've demonstrated why those
3 continue to be relevant with regard to the Plan. In a bench
4 trial such as this, she should be admitted to testify. She
5 should not be disqualified, especially when there are no
6 relevancy concerns here.

7 This is an improper use of a motion in limine, Your
8 Honor. It should be rejected, because at the end of the day,
9 what the FOMB is really asking is for you to prejudge their
10 positions on 314(b)(3) prior to Plan confirmation and their
11 legal positions on preemption and clawback are correct.

12 Your Honor, I'll stop there. In a nutshell, that is
13 our position. I skimmed through a lot of my outline, because
14 I wanted to address your questions directly. I don't know if
15 you have any other further questions that you'd like me to
16 address. If not, I will turn over my time to my co-counsel,
17 Peter Amend.

18 THE COURT: I do want to ask you to address one more
19 point of the Oversight Board, which is their argument that the
20 portion of Ms. Martinez' testimony that relates to application
21 by HTA of revenues transferred to HTA is not relevant to the
22 Commonwealth, PBA, and ERS Plan.

23 MR. ZOUAIRABANI TRINIDAD: Yes, Your Honor. And that
24 is a very good question. It is squarely relevant, and it goes
25 back to what I mentioned, to the issues of the two

1 requirements for the constitutional clawback.

2 We're not talking about activation at this point and
3 whether it was properly activated. We're working off of a
4 world where it was activated, not -- we're not saying that it
5 was legally activated --

6 (Sound played.)

7 MR. ZOUAIRABANI TRINIDAD: -- but the monies have
8 been retained. So the next question is -- Puerto Rico law and
9 the Constitution requires that those clawback revenues be
10 applied in a certain manner, in a certain priority, in a
11 certain waterfall. There's a first priority that has to go
12 with regard to payment to GOs; a second priority with regard
13 to payment of contractually bound obligations, including
14 loans, et cetera; and a third for use on some type of services
15 that assist the citizenship and the people of Puerto Rico.

16 What we're seeing directly is that the FOMB retained
17 the clawback revenues, and instead of going through the
18 waterfalls, they jumped the line on various priorities and
19 started turning it back to HTA, instead of going through the
20 waterfall. We, at a minimum, have a clear example of
21 leapfrogging the whole priority and the whole distribution.

22 So in terms of use and disbursement of those
23 revenues, the fact that the money flowed back to HTA, as it
24 relates to a constitutional clawback issue, is clearly
25 relevant, because we see an example, an example of how the

1 FOMB has ignored the second prong of the constitutional
2 clawback, has leapfrogged priorities, and has determined to
3 use the revenues however they deem fit.

4 THE COURT: Thank you. So --

5 MR. ZOUAIRABANI TRINIDAD: And I'll --

6 THE COURT: Sorry.

7 MR. ZOUAIRABANI TRINIDAD: If Your Honor has no
8 further questions, I will yield the rest of my time to my
9 co-counsel, Peter Amend.

10 THE COURT: Thank you.

11 So that means Mr. Amend has an extra minute and ten
12 seconds.

13 MR. AMEND: Hi. Good morning, Your Honor. I'll be
14 brief. Peter Amend from Schulte on behalf of Cantor-Katz.

15 THE COURT: Good morning.

16 MR. AMEND: Good morning. So I'll be brief. I just
17 want to just note from the beginning that we reviewed Your
18 Honor's opinions from on Friday evening and during the day,
19 and we are considering -- we are considering it, and
20 discussing it with our clients, and conferring on next steps,
21 including an eventual appeal. So I just wanted to make that
22 clear from the beginning.

23 I just wanted to add to what Mr. Zouairabani
24 mentioned, which is essentially that, you know, it doesn't
25 matter whether Ms. Martinez' report shows that a hundred

1 million dollars or a billion dollars was retained by the
2 Commonwealth. Essentially, the report is showing that there
3 has been at least one dollar that's been diverted, and our
4 position is that that is in violation of Puerto Rico law. And
5 that is the evidence that we are offering to show that section
6 314(b) (3) of PROMESA hasn't been satisfied. And so,
7 therefore, for that reason, Your Honor, Ms. Martinez' report
8 is relevant.

9 That's all I have to say. So I -- unless you have
10 questions --

11 THE COURT: Well, I do have a practical question in
12 terms of thinking about the proof that does need to come in,
13 in specific and granular form. I want to pick up on a remark
14 that you just said, that to the extent that you can show, and
15 to the extent it might not even be contested that there are
16 funds that were withheld, and I think that's sort of the crux
17 of the argument here anyway, if there were a stipulation that
18 funds were withheld and not put through the waterfall, given
19 my rulings on your security interest and your administrative
20 claim, is there a necessity for my consideration of the
21 details of the funds tracing and application by HTA?

22 MR. AMEND: Your Honor, I think we'll -- you know, if
23 there is a stipulation that's proposed like -- we would
24 consider it, but, you know, we don't have a stipulation in
25 front of us right now. So I think to answer that, we would

1 have to confer with the Oversight Board and get back -- and
2 inform the Court if we are able to agree to such a
3 stipulation.

4 THE COURT: Thank you. I may well ask you to do
5 that.

6 MR. AMEND: Will do.

7 THE COURT: Thank you.

8 So we'll go back to Mr. Stevens, who has five
9 minutes.

10 MR. STEVENS: Thank you, Your Honor.

11 Your Honor, I want to briefly rebut some of these
12 points that were purported by DRA's counsel. Very briefly,
13 Mr. Zouairabani referred to section 314(b)(4). Very simply,
14 that relates solely to the treatment of administrative expense
15 claims. Your Honor has held that the DRA parties do not have
16 one.

17 THE COURT: I'm sorry. I'm going to ask you to speak
18 a little slower, and to maybe raise your voice just a bit so
19 you're a little clearer.

20 MR. STEVENS: Sure. Sorry, Your Honor.

21 Mr. Zouairabani briefly raised section 314(b)(4) of PROMESA.
22 This relates solely to the treatment of administrative expense
23 claims. Your Honor has held that the DRA parties do not have
24 one, so we do not understand how that could be a basis for
25 Ms. Martinez' testimony to be relevant.

1 More effort was put into section 314(b)(3), Your
2 Honor, and we submit that, simply put, the issue just doesn't
3 show that Ms. Martinez' testimony is relevant to the Plan. As
4 Mr. Zouairabani pointed out, citing a string of Plan
5 provisions, it isn't in dispute here that the Commonwealth
6 retained the Act 30-31 revenues. The debtors have said that,
7 I think, in probably every brief filed on this issue. And it
8 isn't in dispute either that the Plan calls for that to go
9 forward pursuant to section -- I think it's 89.2, as
10 Mr. Zouairabani cited.

11 So evidence relating to whether the debtors -- solely
12 about whether the debtors retained these revenues, which is
13 pretty -- what I understood the DRA parties to be arguing
14 isn't relevant, it's not a disputed fact, and I think we would
15 be at least willing to discuss with the DRA parties a
16 stipulation relating to that, because I don't understand that
17 to be a disputed point.

18 So to the extent Your Honor -- there's a variety of
19 points here. The argument was largely related to whether the
20 constitutional clawback requirements were satisfied. In major
21 respects, that's what Mr. Brickley's testimony relates to, and
22 my colleague, Mr. Rappaport, who will deal with that, is going
23 to talk about that in more detail.

24 Ms. Martinez never once mentions anything about the
25 clawback requirements, Your Honor, and, indeed, doesn't talk

1 anywhere about how the Commonwealth used the money that the
2 Commonwealth retained. Ms. Martinez solely talks about how
3 some money was transferred to HTA.

4 I understand the DRA parties' argument to be that
5 transferring money to HTA is what the law required, and so it
6 can only be evidence that the Commonwealth violated the law to
7 the extent they argued that the transfers to HTA somehow
8 demonstrate a violation of the law --

9 THE COURT: Well, I think this is something that you
10 will need to cover in your meet and confer with them. I think
11 I heard an argument that, to the extent the justification for
12 the withholding is Article VI, Section 8, then the money
13 should not have gone to HTA; it should have been in an Article
14 VI, Section 8 waterfall, starting with the GO bonds; but
15 you'll have to discuss that in determining what can be
16 stipulated and what meta points remain relevant.

17 You may go on, Mr. Stevens.

18 MR. STEVENS: Thank you.

19 (Sound played.)

20 MR. STEVENS: I'm sorry, Your Honor. So, yes, we
21 understand we can discuss those points, Your Honor. I think
22 fundamentally here the Court's rulings and the arguments made
23 here are clear that there may be some -- potentially some
24 unsecured claim, probably on the part of HTA's, and maybe the
25 DRA parties have a security interest in HTA's unsecured claim

1 against the Commonwealth for violating Section 8 of Article VI
2 if that is the case, which we would dispute.

3 The fact they may have an unsecured claim doesn't
4 show anything with respect to confirmation of the Plan. The
5 confirmation of the Plan doesn't require the quantification of
6 unsecured claims against the Commonwealth, every single one of
7 them. No confirmation requirement relates to quantifying
8 unsecured claims.

9 Ms. Martinez' testimony does solely relate to, and
10 indeed the DRA parties essentially said as much in their
11 response to an evidentiary objection to Ms. Martinez' report,
12 it solely goes to quantifying claims. The DRA parties
13 seemingly admit that, and so we would submit, as it's clear
14 they do not have a security interest or an administrative
15 expense claim, this could certainly go to potential
16 quantification of an unsecured claim that simply does not
17 matter for Plan confirmation requirements and --

18 THE COURT: Mr. Stevens, doesn't the Brickley
19 Declaration, which you have also challenged, rely on some of
20 the information in the Martinez Declaration?

21 MR. STEVENS: Your Honor, that's correct. The final
22 page, I understand, of Mr. Brickley's report refers to
23 Ms. Martinez' testimony.

24 (Sound played.)

25 MR. STEVENS: Mr. Brickley -- may I finish my

1 response to you?

2 THE COURT: Yes, please.

3 MR. STEVENS: Mr. Brickley's testimony is obviously
4 subject to another motion in limine that Mr. Rappaport will
5 deal with briefly, but, Your Honor, to the extent to which
6 Ms. Martinez' testimony ultimately can't be changed beyond the
7 fact that all it talks about is whether the Commonwealth
8 retained this money or transferred it to HTA, and the DRA
9 parties do not put forward, as far as I can see, any argument
10 that it's in dispute that the Commonwealth retained some of
11 these monies. And we would submit they can hardly have a
12 claim based on HTA transferring them to HTA, and, in any
13 event, we do have the arguments relating to preemption, and
14 would submit the Commonwealth's constitutional requirements do
15 not have to be satisfied.

16 Unless Your Honor has any further questions --

17 THE COURT: No, I don't. Thank you very much,
18 Mr. Stevens.

19 What I'd like to do, and what we will do is go now to
20 the arguments regarding the Brickley report. Then I will
21 respond with my rulings as to both of the motions, and the
22 steps to be taken with respect to both of the motions.

23 So, Mr. Rappaport, I have you for ten minutes.

24 MR. ZOUAIRABANI TRINIDAD: Your Honor, if I may, this
25 is Nayuan Zouairabani. I would just like to clarify something

1 for the record, because I don't want it to become an issue of
2 contention. With regard to the admin --

3 THE COURT: Yes.

4 MR. ZOUAIRABANI TRINIDAD: -- I just wanted to
5 mention that it could be subject to appeal, and that is why I
6 made the comment that it was not final. I just want to
7 clarify, because I know that some folks may be raising that
8 matter going forward.

9 THE COURT: Thank you.

10 Now we will turn to Mr. Rappaport with respect to the
11 Brickley testimony.

12 MR. RAPPAPORT: Good morning, Your Honor. Lary
13 Rappaport of Proskauer Rose on behalf of the Oversight Board.

14 Your Honor, it's obviously been set up for this
15 argument based on the questions and the comments that were
16 made by counsel and Your Honor. We believe that there's two
17 distinct reasons why the motion in limine should be granted,
18 and Mr. Brickley's testimony should be precluded.

19 The first one is that he doesn't satisfy *Daubert*, and
20 it's precluded by Rule 702(a); and then the second one is
21 relevance. And when I get to both of these arguments, it
22 really is going to tie in to part of the discussion and tie --
23 and it's also going to tie in to the discussion of Your
24 Honor's ruling last Friday with respect to the administrative
25 expense motion.

1 So, first, let's just level set what the rationale is
2 for Mr. Brickley's opinion. It's basically they want
3 Mr. Brickley to opine that the Commonwealth was in violation
4 of Article VI, Section 8. And to use their language, they say
5 that the clawback was improperly triggered, and that's clear
6 from the last page of Mr. Brickley's report where he states
7 what the opinion is.

8 First, it should be precluded under *Daubert* and Rule
9 702, because this is really nothing more than dressing up
10 counsel's legal arguments by saying it's having Mr. Brickley
11 state them as an expert. It's clear, and we've cited the
12 cases in the papers, that First Circuit authority holds that
13 experts cannot give opinions about the substance of the law.
14 That's what he's trying to do. And here we also have a
15 situation where Mr. Brickley is not an attorney. And the
16 cases that we cite for that are *Soto-Rivera*, 133 F.3d 92,
17 and also the *San Juan Cable* case, which is 196 F. Supp. 3d
18 248.

19 Mr. Brickley's opinions also are not based on
20 scientific, technical, or other specialized knowledge. What
21 he does is he's -- it's an eight-page report really. It
22 carries a little bit over onto page 9. It's almost entirely
23 based on assumptions that he was provided of statutes and the
24 interpretation of the law by counsel, and he acknowledges that
25 in the body of the report.

1 There's a small graph that's cut and pasted on page
2 7, which is public record. It's from a fiscal plan. There's
3 a reference to a discovery meet-and-confer letter, and then he
4 does cite to the conclusions that were made by Ms. Martinez.
5 And based upon that, he concludes that there was a violation
6 of law.

7 We would submit, Your Honor, that the Court is quite
8 capable of considering their legal arguments, capable of
9 considering the evidence, to the extent it's admissible, and
10 the Court can interpret Article VI, Section 8 without any
11 testimony by Mr. Brickley. But beyond that, Your Honor, it's
12 also not relevant. It's not relevant because, as Your Honor
13 ruled last Friday, there is an alternative basis that has
14 nothing to do with Article VI, Section 8 for the Commonwealth
15 retaining and using the Act 30-31 revenues.

16 In your Opinion, Your Honor, you held not only that
17 the DRA parties do not have a security interest, and HTA does
18 not have a property interest in the revenues that are retained
19 by the Commonwealth, but also that if the Commonwealth
20 breached a prepetition obligation to transfer Act 30-31
21 revenues to HTA, such a breach -- and then quoting from page
22 19 -- is not materially different from the nonpayment of
23 prepetition unsecured claims that occurs upon a commencement
24 of every bankruptcy case.

25 And as Your Honor wrote, also on page 19, the

1 automatic stay protects the debtor from collection of such
2 payments upon commencement of a bankruptcy case, and the
3 bankruptcy estate benefits from the ability to use resources
4 that would otherwise be used for the timely satisfaction of
5 prepetition unsecured claims.

6 Now, I recognize, as you asked Mr. Stevens -- and
7 Your Honor has not yet interpreted PROMESA Section 314(b)(3),
8 and, again, I believe that's something that Your Honor will
9 do, not Mr. Brickley. But Section 314(b)(3) only requires
10 that it not be prohibited by law. It does not state
11 Commonwealth law. It does not state the Commonwealth
12 Constitution. It says, not prohibited by law.

13 And as Your Honor held in denying the administrative
14 expense claim, bankruptcy law allows the Commonwealth to do
15 exactly what it did. Also, as Mr. Stevens noted, if the
16 retention of Act 30-31 revenue breached a statutory
17 obligation, it's no different than a breach of contract. If
18 HTA has a general unsecured claim arising from the breach,
19 that's a dischargeable claim under *Ohio v. Kovacs*. It doesn't
20 rise to a constitutional violation. But there's additional
21 reasons. I mean, it's -- the independent ground that we've
22 just walked over, which stems from Your Honor's ruling last
23 Friday, that is independent of the Commonwealth Constitution.
24 And because it's permitted by bankruptcy law, we would submit,
25 Your Honor, that Mr. Brickley's testimony is not relevant to

1 the case.

2 Another ground, though, independent of that is
3 preemption. I know that Your Honor hasn't reached preemption
4 yet. I know that it's been teed up several times. But to the
5 extent that Article VI, Section 8, or to the extent that the
6 Act 30-31 excise tax statutes are inconsistent with the
7 Commonwealth retaining the revenues and using the revenues,
8 either using them during Title III or using them underneath --
9 under a confirmed Plan of Adjustment, it would be
10 inconsistent. It would be inconsistent with PROMESA, and
11 PROMESA is a law.

12 Article 314(b)(3) only states the Plan shall be
13 confirmed if the debtor is not prohibited by law. Clearly, if
14 it's allowed by PROMESA to do this, it's allowed to do it.
15 It's not prohibited by law.

16 PROMESA, Title III, independently authorizes the
17 Commonwealth not to make payment on its prepetition debt.
18 Again, that's something which is allowed. It's independent of
19 the Puerto Rico Constitution. The automatic stay, as Your
20 Honor noted in the Opinion issued on Friday, the automatic
21 stay allows this.

22 PROMESA Section 305 specifically enjoins the Court
23 from entering any order that would interfere with the debtors'
24 use of the property, which, as the Court has held before,
25 precludes the Court from ordering the debtors to make payment

1 on the debt. And we would also submit, Your Honor, that based
2 on the indisputable facts, the retention conditions of Article
3 VI, Section 8 were, in fact, satisfied.

4 When PROMESA was enacted, Congress expressly found in
5 PROMESA Section 405(m) that there was a fiscal emergency in
6 Puerto Rico that made the Commonwealth unable to provide its
7 citizens with effective services. That necessitated a fair
8 and orderly restructuring of the Commonwealth debt. But those
9 findings in PROMESA demonstrate the Commonwealth does not have
10 the funds necessary to pay its debt and continue performing
11 basic --

12 (Sound played.)

13 MR. RAPPAPORT: -- governmental services.

14 And, Your Honor, unless you have any more questions
15 regarding this argument, then what I would do is I would
16 retain the rest of my time for rebuttal purposes.

17 THE COURT: Thank you. I have no further questions
18 at this time, and you have a minute and a half left.

19 So now we will turn to Mr. Zouairabani again, who has
20 been allotted 11 minutes.

21 MR. ZOUAIRABANI TRINIDAD: Good morning, Your Honor.
22 Again, for the record, Attorney Nayuan Zouairabani on behalf
23 of AmeritNat. I am joined by my co-counsel, Peter Amend, from
24 Schulte Roth & Zabel, who represents Cantor-Katz Collateral
25 Monitor.

1 Your Honor, I would like to address, first of all,
2 the FOMB's contentions regarding *Daubert* for Mr. Brickley.
3 Now, before we discuss in detail why Mr. Brickley's testimony
4 should not be excluded under *Daubert*, it is important to
5 highlight specific facts. The first matter that I would like
6 to highlight is that the FOMB, in their motion in limine and
7 in their reply, they do not challenge Mr. Brickley's
8 credentials, his background, and qualifications on complex
9 financial matters, or his ability to serve as an expert here.

10 Mr. Brickley has over 29 years of experience in
11 financial advisory and investment banking services. He's a
12 certified insolvency and restructuring adviser. He's also a
13 certified turnaround professional. He has served as chief
14 restructuring officer, bankruptcy trustee, examiner, and
15 examiner with expanded powers, in Chapter 11 and Chapter 7
16 cases as applicable since 2002. Nineteen years of experience.

17 Now, some of his regular duties and responsibilities
18 in those functions include performance of clawback assessment.
19 Granted, they're not constitutional clawback, but we're
20 talking about clawback assessments under Chapter 5 of the
21 Bankruptcy Code. So your typical fraudulent conveyances, your
22 preferences. And as I mentioned when we were discussing the
23 Martinez Motion in Limine, clawback has two main criteria.
24 The first one is activation, and the second one is
25 distribution. That is not different. It's the claim building

1 block as a clawback assessment under Chapter 5 of the
2 Bankruptcy Code.

3 You have to assess whether the activation for the
4 clawback in order -- for those Chapter 5 causes of action can
5 go forward, and you also have to determine what is the
6 appropriate use of the funds. But we can see that
7 Mr. Brickley's credentials and experience on this matter was
8 never questioned by the FOMB, and it wasn't questioned even
9 when they took his deposition. Therefore, these stand
10 unchallenged at this time.

11 Having clarified that, let's now move to some of the
12 substantive issues that the FOMB raises regarding *Daubert*
13 issues. The first is the FOMB's self-serving reading that the
14 Brickley report is a mere regurgitation of other documents,
15 and that mere issue, Your Honor, is belied by the report
16 itself. While Mr. Brickley references several documents and
17 legal provisions, the same were assessed to provide context
18 and the foundations for his conclusion, which, again, the FOMB
19 does not challenge. There's no challenge to those
20 conclusions.

21 The second contention from the FOMB is that
22 Mr. Brickley's report should be excluded, because his
23 conclusions are predicated upon legal assumptions provided by
24 counsel and is of no merit here, because he's not an attorney.
25 Now, even if such a challenge were applicable here, this would

1 not warrant the exclusion of Mr. Brickley's expert testimony.
2 This contention, if anything, would go to the weight, not the
3 admissibility of his testimony. And we reference in our brief
4 to *Boucher v. U.S. Suzuki Motor Corp.*, 73 F.3d 18, at page 21,
5 which is Second Circuit, 1996.

6 Finally, none of the conclusions contained in the
7 Brickley report are legal in nature. Instead, they are
8 factual conclusions made by Mr. Brickley by applying his
9 specialized knowledge. As I mentioned, since 2002, in his
10 duties in bankruptcy, he has performed clawback assessments
11 before. And, in fact, he has testified as to that before.
12 That was in question with regard to his experience testifying
13 before court.

14 So, he applied his specialized knowledge and
15 background, which are unchallenged and unquestioned, in
16 interpreting the documents relied upon for his opinion. And
17 these opinions will help the Court determine the ultimate
18 legal question at issue here, namely, whether the clawback,
19 constitutional clawback affected by the Commonwealth for
20 several fiscal years was constitutional or not.

21 Now, Mr. Rappaport indicates that his report is eight
22 to nine pages long, and if it's nine -- eight to nine pages
23 long, that is only due to the fact that there was -- few
24 information was provided by the FOMB and the government
25 parties when we were undertaking discovery on this particular

1 topic. When asked for those specific type of discovery
2 documentation, the information was scant.

3 Mr. Brickley performed a full assessment on the
4 available -- information that was available to him. It is
5 complete, to the best of his knowledge and his specialized
6 experience, and, in fact, his report, actually it includes in
7 Exhibit B with -- a list of additional documentation that he
8 would have liked to have looked at in order to further support
9 his report, but those were not available to him through the
10 government parties. So I believe length of the report does
11 not make it any more or less meaningful.

12 Having explained why Mr. Brickley meets the criteria
13 to be accepted as an expert in this case under Rule 702, we
14 now turn once again to the relevance objections, in which they
15 should be -- they should be denied for the same reasons that
16 we discussed when talking about Mr. Martinez' motion in
17 limine. In this particular case, Mr. Brickley's report goes
18 back squarely to the issue of 314(b)(3) of PROMESA, and
19 whether the Plan satisfied the legality requirements, that it
20 not be prohibited by law.

21 Now, his conclusions specifically outline why the
22 Commonwealth did not comply with the clawback, with neither
23 the activation element of it, nor the distribution prong of
24 it. As Your Honor mentioned, he relied upon doing his
25 analysis on Ms. Martinez' report with regard to the

1 distribution of the revenues, but his conclusions specifically
2 state that, first of all, there has not been a deficit in the
3 Commonwealth budget since 2018. The Commonwealth clawback,
4 the Act 30-31 incremental revenues in fiscal year 2016 through
5 2020, no payment of the GO debt has been made since January
6 2016, and the Commonwealth failed to comply with the waterfall
7 priorities outlined in section 4(c) of the Office Management
8 Budget Act, despite transferring clawback funds to HTA.

9 So these conclusions establish through expert
10 testimony that the Plan does not satisfy section 314(b)(3) of
11 PROMESA due to the fact that the Commonwealth has unlawfully
12 retained the Act 30-31 incremental revenues in violation of
13 Article VI, Section 8 of the Puerto Rico Constitution.

14 As explained when we discussed with Ms. Martinez'
15 motion in limine, the DRA parties are entitled to raise this
16 as a creditor of the Commonwealth, as a creditor of the PBA,
17 and to challenge whether the Plan satisfies all of the
18 confirmation requirements. Again, the Court has an
19 independent duty of assessing them before confirming a plan.

20 I would like to address briefly some of the points
21 Mr. Rappaport mentioned regarding why, at the end of the day,
22 this is relevant. The first aspect that I want to address,
23 why 314(b)(3) is still important, Mr. Brickley's report is
24 still important here, if the FOMB bases itself, number one,
25 that preemption applies here -- again, no ruling has been made

1 on preemption. Absent a -- absent a finding on preemption,
2 the only way the Commonwealth can legally retain the money
3 going forward in compliance -- to comply with the Plan
4 payments would be through the clawback. And the Court would
5 have to make an assessment whether the clawback has been
6 legally satisfied here or not.

7 Mr. Rappaport's comments that it's a prepetition
8 breach, the automatic stay would permit them to do this, and
9 that it would be dischargeable have no bearing here. Once
10 Your Honor -- if it were to confirm the Plan and the Plan
11 becomes effective, the automatic stay goes out the door. The
12 discharge of anything would be to any prepetition claim using
13 Mr. Rappaport's analogy. But going forward, now that there's
14 no automatic stay, and if there's no preemption, what's the
15 legal basis for the FOMB to retain the revenues in order to
16 comply with the Plan? It would have to be the constitutional
17 clawback.

18 So constitutional clawback, whether the FOMB likes it
19 or not, is squarely relevant here, and it's an independent
20 assessment the Court needs to make. So at the end, Your
21 Honor, and as you've seen from the FOMB's arguments and their
22 pleadings, they're confounding and asking the Court to
23 prejudge 314(b)(3) and the motion in limine, and to make a
24 determination on preemption and their views of clawback. That
25 is improper to be done in a motion in limine asking to exclude

1 an expert who will provide testimony squarely relevant to a
2 confirmation matter and issue that the Court needs to assess.

3 Another matter that I would like to address --

4 (Sound played.)

5 MR. ZOUAIRABANI TRINIDAD: -- that is highly improper
6 in the FOMB's motion in limine is that they've asserted for
7 the first time ever in four years that the conditions laid out
8 in Section 8 of Article VI of the Puerto Rico Constitution
9 have been met. The motion in limine is not the appropriate
10 procedural vehicle through which to assert a substantive
11 argument regarding the legality of the clawback for the first
12 time.

13 In sum, the motion in limine is premised exclusively
14 on the FOMB's belief that their view of the world is right,
15 and their legal position on preemption and clawback are
16 correct. That is improper, and the Court should reject the
17 motion in limine.

18 The report should not be excluded, and at the end of
19 the day, the report, Mr. Brickley's testimony, meet the low
20 threshold of relevance for consideration in the Plan
21 confirmation for all the reasons that we stated.

22 And unless Your Honor has any questions, I will yield
23 the remainder of my time to my co-counsel, Peter Amend.

24 THE COURT: Thank you. We will turn to Mr. Amend
25 now.

1 MR. AMEND: Your Honor, nothing further from me.

2 THE COURT: Thank you, Mr. Amend.

3 So we will return to Mr. Rappaport.

4 MR. RAPPAPORT: Thank you, Your Honor. I just want
5 to briefly respond to a couple points that were made by
6 counsel.

7 The first one is counsel argued that we didn't object
8 to the qualification to Mr. Brickley with respect to his
9 experience in financial matters. That really misses the
10 point. The point is that he's offering a legal opinion, and
11 he's not qualified to offer a legal opinion, nor is it
12 appropriate to offer a legal opinion. Your Honor interprets
13 the law.

14 And on page 9, it concludes, it is our opinion that
15 by having performed these transfers of the Acts 30 and 31
16 incremental revenues to the HTA, the Commonwealth has failed
17 to make required GO debt payments under Article VI, Section 8
18 of the Constitution or comply with the waterfall priority
19 payments outlined by the L -- OMB Act. That is we would
20 submit, Your Honor, a legal conclusion that is inappropriate.

21 Second, counsel spoke -- I think he misinterpreted my
22 comments about what the length of the report was. The reason
23 I stated that was it's barely nine pages, and of that, it's
24 entirely the assumptions of counsel, a cut-and-paste graph,
25 reliance on Ms. Martinez. There's nothing beyond that. That

1 was the reason. It wasn't that the length itself was either
2 long or short.

3 With respect to 314(b)(3), I disagree with counsel's
4 statement that there must be no violation of the clawback in
5 order for 314(b)(3) to be complied with. Again, as Your Honor
6 found in your Opinion on Friday with respect to the
7 administrative expense claim, there is an independent basis
8 for the funds to be retained and to be used by the
9 Commonwealth. That's also in addition to the preemption
10 argument. That's also in addition to the 405(m) argument.
11 There's an independent ground. You don't even have to get to
12 the clawback in order to determine that 314(b)(3) has been
13 satisfied.

14 And I would submit under that, Your Honor.

15 THE COURT: Thank you, Mr. Rappaport.

16 So as to these two motions, docket entry no. 18328 in
17 case no. 17-3283, the Oversight Board's Motion in Limine to
18 Exclude the Testimony of Lizette Martinez, and docket entry
19 no. 18331 in case no. 17-3283, the Oversight Board's Motion to
20 Exclude the Testimony of Douglas Brickley, the Court is
21 reserving decision on both motions at this time in light of
22 the recency of the Court's rulings on the administrative
23 expense claim of the DRA parties, and the dismissal of the DRA
24 parties' adversary proceeding, and today's increased focus in
25 arguments on the DRA's PROMESA Section 314(b)(3) position, and

1 the Commonwealth's preemption arguments.

2 The Court directs the DRA parties and the Oversight
3 Board to meet and confer, and file a joint status report by
4 November 4th, which is Wednesday, at -- no. I'm sorry.
5 November 4th is Thursday, at 12:00 noon, indicating whether
6 and to what extent they can stipulate as to facts relevant to
7 issues that have not yet been decided by the Court that are
8 implicated by these two expert proffers, and the extent, if
9 any, to which, by reason of the stipulations or otherwise, the
10 DRA intends to reduce or narrow the scope of the evidence and
11 objections with which it intends to go forward for the
12 confirmation hearing as to these witnesses in light of the
13 rulings of the Court at the end of last week on Friday. So
14 decision is reserved pending the Court's receipt of that joint
15 status report.

16 We had a lot of technical difficulties this morning,
17 so we are not as far through the Agenda as I had expected to
18 be by this time, but we will take now the ten-minute morning
19 break. So I am instructing the people who are on the AT&T
20 line to come back on -- I'm sorry. There is a raised hand
21 first.

22 Mr. Mintz?

23 MR. MINTZ: Good morning, Your Honor. Doug Mintz for
24 Cantor-Katz on behalf of DRA. I just wanted to confirm that
25 that time and date was Thursday at noon, as opposed to

1 Wednesday at noon.

2 THE COURT: It is Thursday at noon, not Wednesday.

3 Sorry. November 4th.

4 MR. MINTZ: That's fine. Thank you very much, Your
5 Honor.

6 THE COURT: Thank you.

7 So we will resume at 11:25. The people who are on
8 the AT&T line should disconnect and call back in before 11:25,
9 and those of us who are on Zoom can just mute and shut down
10 the cameras.

11 Thank you. We are adjourned until 11:25.

12 (At 11:07 AM, recess taken.)

13 (At 11:22 AM, proceedings reconvened.)

14 THE COURT: Good morning again. Our next Agenda item
15 is the DRA parties' motion in limine to exclude certain Rule
16 26(a)(2)(C) expert witnesses or testimony, which is docket
17 entry no. 18340 in case no. 17-3283. So would the following
18 counsel please open their cameras: Mr. Mott, Mr. Cepeda Diaz,
19 Mr. Mervis. It's just those three.

20 So I have first on my order of argument, Mr. Thomas
21 Mott for the DRA Collateral Monitor for ten minutes.

22 MR. MOTT: Good morning, Your Honor. My name is Tom
23 Mott. I'm with --

24 THE COURT: Good morning.

25 MR. MOTT: -- Schulte Roth & Zabel. I represent the

1 Collateral Monitor, one of the DRA parties. I'm here with
2 Alejandro Cepeda Diaz, with McConnell Valdes, representing the
3 Servicer and the other DRA party.

4 To begin with, as we told the FOMB over the weekend,
5 we are no longer pursuing this motion with respect to
6 Mr. Herriman and Mr. Shah. We are still pursuing a motion
7 with respect to Mr. Malhotra, but only because the FOMB
8 rejected our reasonable offer to withdraw the motion if they
9 agreed to let us depose Mr. Malhotra for one hour about his
10 declaration. Counsel for the FOMB rejected this proposal last
11 night without providing any additional explanation.

12 Taking a step back, there was a procedures order in
13 place in this case that required expert reports by September
14 13. For ten of the FOMB's witnesses, expert witnesses, they
15 did not provide any reports. Instead, we've gotten their
16 expert opinions only a week ago, after the close of discovery
17 and after any chance for us to provide expert rebuttal reports
18 in response to that expert testimony.

19 Initially, we were going to move on that basis with
20 regard to all ten of their witnesses; but we worked through
21 it, and it only seemed to make sense to move on three, the
22 three most relevant to our case. Since we got the
23 declarations last week, we've now been able to review those
24 declarations and winnow this down even further.

25 For Mr. Herriman, now that we have his declaration,

1 we can confirm that we have no issues with it being admitted
2 into evidence. And now for Mr. Shah, we have been able to
3 look at this declaration and confirm it's substantially
4 similar to his best interest test reports --

5 THE COURT: I'm sorry. I think you need to move
6 yourself a little closer to your microphone. Your sound got a
7 bit muddy when you sat back.

8 MR. MOTT: I'm sorry about that.

9 For Mr. Herriman, now that we have his declaration,
10 we can confirm that we have no issues with it. And with
11 respect to Mr. Shah's declaration, we've confirmed that it's
12 substantially similar to his best interest test reports, which
13 we were able to use while deposing him.

14 For Mr. Malhotra, unlike Mr. Herriman, we have
15 questions we want answered before confirmation about his
16 declaration, a declaration that we got last week. And unlike
17 Mr. Shah, we did not have any of Mr. Malhotra's expert
18 opinions before we deposed him.

19 Under the Procedures Order, Mr. Malhotra's expert
20 testimony was supposed to be provided to us on September 13.
21 This was meant to allow us to depose him about his expert
22 opinions. It was also meant to give us time to provide a
23 rebuttal expert report, if necessary. Instead, because we've
24 only received his expert opinions last week, our
25 cross-examination of him at confirmation will be the very

1 first time we'll be able to ask him questions about his
2 specific opinions.

3 To avoid this trial by ambush and save time during
4 the hearing, we propose the FOMB that they reopen
5 Mr. Malhotra's deposition for one hour. They rejected this
6 proposal. Therefore, we're asking the Court to either
7 preclude Mr. Malhotra's deposition or enter an order reopening
8 his deposition.

9 I'll also note that, while the FOMB cites to the fact
10 that they agreed to provide us with a list of reliance --
11 documents relied on by Mr. Malhotra, we were never provided
12 with this list. We certainly weren't provided with that list
13 before his deposition. We've asked multiple times for the
14 list, and they've yet to include that list.

15 And despite what the FOMB says, despite what
16 Mr. Malhotra was coached to say, calling himself a
17 non-retained expert many times during his own deposition,
18 Mr. Malhotra does not qualify as a Rule 26(a)(2)(C) witness.
19 Rather, he was paid to provide expert testimony, and,
20 therefore, required to provide an expert report under Rule
21 26(a)(2)(B).

22 Mr. Malhotra is being paid to testify. His
23 declaration is, in part, based on assumptions and facts
24 provided to him by counsel, rather than on his own firsthand
25 experience, other than the experience of drafting his own

1 declaration, which can't suffice. In fact, Mr. Malhotra
2 during his deposition admitted to the fact that he developed
3 many of his opinions while drafting his own declaration, and
4 not in connection with any work that he'd performed prior to
5 that.

6 If the Court does not preclude Mr. Malhotra's
7 declaration and does not order that his deposition be
8 reopened, in the alternative, we ask the Court strike those
9 portions of Mr. Malhotra's declaration that are not based on
10 his firsthand experience.

11 Lastly, Your Honor, I just wanted to emphasize the
12 reasonableness of our offer here. All we asked for was one
13 hour to depose Mr. Malhotra about a deposition that we
14 received a week ago. We used less than six hours when we
15 first deposed him, and so we wouldn't be going over the seven
16 hours originally allotted for his deposition.

17 And unless Your Honor has any questions or -- I'm
18 available to answer any questions you may have.

19 THE COURT: Thank you. I'll wait to hear from
20 Mr. Cepeda Diaz if he's going to speak, and then the counsel
21 for the Oversight Board.

22 Does Mr. Cepeda Diaz have anything further at this
23 point?

24 MR. CEPEDA DIAZ: Good morning, Your Honor. This is
25 Alejandro Cepeda on behalf of AmeriNational Servicer. At this

1 time, I have nothing to add to the arguments made by Mr. Mott.

2 THE COURT: Thank you, Mr. Cepeda.

3 So now I will turn to Mr. Mervis for the Oversight
4 Board.

5 MR. MERVIS: Good morning, Your Honor. I think it
6 still is the morning. Yes. Good morning, Your Honor.

7 THE COURT: Good morning.

8 MR. MERVIS: Let me first say I'm going to resist the
9 temptation to respond to the allegations of coaching and
10 discussion of meet and confer discussions that happened
11 yesterday on the record. I will also say that Your Honor has
12 the deposition testimony that the DRA parties proffered. Your
13 Honor obviously can read it for -- the Court can read it for
14 itself. I will simply say that the -- what is being
15 attributed -- the meaning that's being attributed to that
16 testimony just isn't supported by the testimony.

17 I think there are two threshold issues that are
18 presented here. One is -- and now we are limited to
19 Mr. Malhotra -- is he or was he a 26(a)(2)(B) witness? And
20 the answer to that, Your Honor, is no. As his declaration
21 makes very clear, and as our designation of him as a
22 26(a)(2)(C) witness itself made clear, his testimony is based
23 on the work he has done for the Oversight Board as one of its
24 key advisors over the past four years. It is not correct that
25 he developed his testimony while writing his declaration. All

1 of his testimony, as set forth in his declaration, is based on
2 the work he's done and his familiarity with the Plan
3 provisions, the Fiscal Plan provisions, and related subject
4 matter.

5 So the -- regardless of how the Court interprets the
6 Procedures Order -- and it's Your Honor's order. I'm not
7 going to argue which way it cuts -- this witness and none of
8 the witnesses that we designated as (a)(2)(C) witnesses
9 qualify as reporting retained experts. None of them were
10 specially retained. None of them are being specially paid to
11 testify. To the extent that there's payment for
12 Mr. Malhotra's testimony, it's not to him. It's to Ernst &
13 Young, and it's pursuant to their engagement agreements.

14 There was some suggestion that Mr. Malhotra is
15 relying on the work of others, and that is true to some
16 extent, but it ignores the way that the Oversight Board works.
17 It's a collaborative effort between Board staff, the various
18 professionals, and members of the Board itself. There is
19 nothing in the case law that has been cited to you that
20 suggests that reliance -- or in this case, partial reliance on
21 the work of others makes somebody not a 26(a)(2)(C) expert and
22 converts them into a 26(a)(2)(B) expert.

23 The one thing that is sort of confounding, Mr. Mott
24 said this, and they said it in their papers, we did agree as
25 part of a discovery dispute that had originally been teed up

1 to Magistrate Judge Dein to provide a list of materials that
2 the witnesses relied on. And we did, in fact, provide a list
3 for Mr. Malhotra. It was uploaded to the Plan Discovery Data
4 Room into a folder named, aptly enough, Non-retained Expert
5 Reliance Materials. And it was uploaded on October 13th at
6 1:27:38 Eastern Standard Time, and the witness deposed two
7 days later. So I'm not sure where that allegation is coming
8 from, but we did, in fact, provide that list.

9 The other thing, Your Honor, that I think is
10 important to recognize is this case is a little different than
11 basically all the cases that have been cited by the parties.
12 This case has a disclosure statement that provides in
13 painstaking detail the Board's position and the disclosed
14 facts with respect to a plethora of subjects. Everything in
15 Mr. Malhotra's declaration, and everything in the disclosure
16 for him is in that disclosure statement. And that was fully
17 available to the DRA parties, and they could have educated
18 themselves about what the disclosure statement says. They
19 could have asked the witness all about each subject, using the
20 disclosure statement as a guide.

21 The DRA parties cite *Owens v. -- sorry. Owens-Hart*
22 *v. Howard University* in footnote 5 of their opening brief.
23 That case stands for the proposition that even where the
24 disclosures themselves may not be up to snuff, additional
25 supplementation gets -- can get it over the hurdle.

1 I'm not suggesting that our disclosures were not up
2 to snuff. I think they were. But the reliance list was above
3 and beyond, and they did, in fact, get it.

4 So let's move to the second subject, Your Honor,
5 which is what are his opinions and were they adequately
6 disclosed. And that is something that Mr. Mott didn't talk
7 about, but I would like to.

8 There are only three arguable opinions in this
9 declaration. They are exactly -- I don't know if they're
10 verbatim, but they're close to verbatim, what was disclosed in
11 the 26(a)(2)(C) disclosures.

12 Whether they rise to the level of Rule 702 expert
13 opinion or whether they are -- or whether they can be properly
14 viewed as a reasonable conclusion by a professional based on
15 his review of materials that he was involved in creating, that
16 may be debatable. And that's exactly why we made the
17 disclosure, because we recognize that someone could say, hey,
18 this crosses the line into expert disclosure.

19 So if I could run through them very quickly, Your
20 Honor, I think you'll see that none is particularly
21 controversial, and they had ample notice of all. So the first
22 topic, which is at paragraph 29 of the witness' declaration,
23 is that the Plan is not likely to be followed by the need for
24 further financial reorganization, and that's at paragraph 29.
25 And then from paragraphs 30 to 53, the witness talks about why

1 he makes that conclusion. And here are the topics that he --
2 and the facts that he talks about.

3 The Plan reduces debt. That's known to everyone.
4 The DRA parties could have questioned him on that.

5 The pension reserve trust. That's discussed in the
6 Disclosure Statement, and, in fact, the DRA parties did
7 question him on it in the deposition at pages 106 and 107.

8 I understand, Your Honor, because of the way this
9 motion played out, you don't have the transcript in front of
10 you. We're happy to provide it, but I'm making
11 representations, Your Honor.

12 The CVIs, paragraph 35 and 36 of his declaration,
13 again covered in the Disclosure Statement, covered in the
14 deposition at pages 106 and 110 through 111.

15 The debt management policy and the debt cap,
16 paragraphs 38 through 40 of his declaration, again covered in
17 the Disclosure Statement.

18 Additional reforms. This is -- and this is
19 paragraphs 41 and 42, and this is where Mr. Malhotra
20 cross-references Mr. Wolfe's expert report, which the DRA
21 parties had, you know, from the time that the reports were
22 served and filed.

23 The next opinion has to do with Medicaid money and
24 the Biden administration interpretation of Medicaid
25 availability for the territories. That was extensively

1 covered in the Prager expert report that the DRA parties
2 submitted. It was also discussed and questioned about during
3 the deposition.

4 The minimum unrestricted cash reserve. That's
5 paragraph 49. Again, both discussed in the Disclosure
6 Statement and discussed during the deposition.

7 The disaster aid recovery at paragraph 50, again,
8 discussed in the Disclosure Statement.

9 The emergency reserve at paragraph 51, discussed in
10 the Disclosure Statement, and also discussed during his
11 deposition.

12 The possibility that the Commonwealth may not
13 implement all structural reforms, discussed at various
14 parts -- places in the Disclosure Statement, also discussed
15 during his deposition.

16 And, finally, the possibility that federal funding
17 may be reduced from its current levels, again, also discussed
18 during -- discussed in the Disclosure Statement.

19 The second opinion, very simple, that the financial
20 obligations under the Plan are consistent with the debt
21 sustainability analysis, that conclusion is at paragraph 61 of
22 his deposition. Paragraphs 55 through 60 are the build-up.
23 It is essentially just a walk-through debt sustainability
24 analysis in the Fiscal Plan, which of course was available to
25 everyone, and could have been the subject of questioning at

1 the deposition.

2 The final and third opinion, Your Honor, is just
3 math. It is that -- he talks about the financial impact of
4 what the Oversight Board contends are preempted Commonwealth
5 statutes. It's based on the statutes, and based on Exhibit K
6 of the Disclosure Statement. And it's essentially just math.
7 It's the witness calculating what the appropriations are under
8 these very statutes, and adding them up.

9 Again, I think it's very debatable whether any of
10 these opinions cross over into Rule 702 territory. We
11 disclosed under 26(a)(2)(C) to give more disclosure, not less.
12 And to -- I guess to sort of close the loop, the question --
13 or the implication is, well, gee, what's another hour with the
14 witness? Well, two things on that, Your Honor. First of all,
15 unless the Court finds that the disclosures were inadequate or
16 improper, there's no basis for another deposition. This is
17 how the rules work. They should have done a little more
18 homework, and followed up a little bit more with the witness,
19 and learned a little bit more what he had to say, particularly
20 because, in many cases, he volunteered what he was going to
21 testify about.

22 But the second thing I'll say, Your Honor, is an hour
23 actually does make a difference. We're very busy. Everyone's
24 very busy. Mr. Malhotra, in addition to testifying at the
25 hearing, has a day job working for the Oversight Board through

1 EY, and an hour taken away from that does matter. So I
2 appreciate counsel, you know, suggesting that, oh, what's
3 another hour, but the hour has to be deserved and it has to be
4 earned.

5 Unless Your Honor has any questions, I have no
6 further remarks, Your Honor.

7 THE COURT: Thank you, Mr. Mervis.

8 We'll return to Mr. Mott.

9 MR. MOTT: Sure. Just to respond to a few of
10 Mr. Mervis' points. One, throughout the deposition, and I can
11 cite the page numbers of the transcript, but Mr. Malhotra
12 admitted to the fact that -- many of his opinions where -- he
13 had come to while drafting the declaration, and he also
14 admitted to the fact that many of the assumptions and
15 information that went into his declaration were provided to
16 him by FOMB counsel.

17 Two, he also admitted that EY engagement agreements
18 set out specifically that he was being paid for one of his
19 services, and that one of those services was to be providing
20 expert testimony in connection with this case. So -- and then
21 just to go into, you know, Mr. Mervis was making a big deal
22 about how the disclosures set forth his opinions, and,
23 therefore, we should have known what he was going to say; but
24 his disclosures set forth the subject matter of his opinions.

25 And we did get to depose him, and I was the one

1 | deposing Mr. Malhotra. And so I was able to ask him, okay,
2 | what do you mean by this subject, and what is your basis for
3 | that. But then when he provides what his opinion is, that's
4 | different than getting an expert report and being able to
5 | speak with my experts and figure out what it is exactly that
6 | we want to ask him about. But I'd have to do it on the fly,
7 | on my toes, figure out what we want to ask him about.

8 | And, you know, we've -- now that we have his
9 | declaration, our experts have several new issues that were not
10 | anywhere in his opening expert disclosures. One example of
11 | that is his declaration, and it's really specific as to the
12 | bases for Mr. Malhotra's opinions. But one example, and I'll
13 | provide one, his declaration raises a new -- a legal case
14 | regarding whether or not residents of Puerto Rico should have
15 | access to Supplemental Security. Now, this wasn't referenced
16 | anywhere in his expert disclosure whatsoever. And he mentions
17 | the SSI as a potential variable, but in his declaration, he
18 | does not provide an estimate or a figure for what impact that
19 | might have. And we would like to ask Mr. Malhotra if he's
20 | quantified that potential figure.

21 | And that's just one example. And we think we with --
22 | an hour, would provide us the ability to determine whether or
23 | not we needed to ask those questions in a cross-examination
24 | during the hearing, or once we get that information through
25 | the deposition, it might be that we save the time during

1 confirmation and wouldn't need to get into those things.

2 And unless Your Honor has any other questions, I'm
3 happy to cede to counsel, Mr. Cepeda.

4 THE COURT: Thank you. I don't have further
5 questions for Mr. Mott.

6 Mr. Cepeda?

7 MR. CEPEDA: Yes, Your Honor. I have nothing further
8 to add.

9 THE COURT: Thank you.

10 Give me just a moment to collect my thoughts.

11 Thank you for your patience. The DRA parties have
12 moved in limine to exclude certain Rule 26(a)(2)(C) witnesses
13 or testimony. That is Docket Entry No. 18340 in Case No.
14 17-3283. The motion is being pressed today as against witness
15 Gaurav Malhotra only.

16 The DRA parties argue that the testimony should be
17 precluded, because the Oversight Board did not submit expert
18 reports -- well, an expert report for this witness as the DRA
19 parties believed the Procedures Order required. They further
20 argue that the Oversight Board didn't provide sufficient
21 disclosures under Rule 26(a)(2)(C); that the disclosure
22 provided did not give sufficient information to demonstrate
23 that the witness is qualified to provide expert opinion
24 testimony under Rule 26(a)(2)(C); and today raised some
25 specific issues as to elements of the declaration that has

1 | been provided for Mr. Malhotra.

2 | The Court denies the motion. First, the Procedures
3 | Order didn't expressly override Rule 26(a)(2)(C), and the DRA
4 | parties' motion, to the extent it contends that the Procedures
5 | Order did override 26(a)(2)(C) in terms of requiring a report
6 | for anyone characterized as an expert, is untimely.

7 | The debtors filed their preliminary witness list on
8 | August 3rd of 2021. That identified this witness and other
9 | challenged witnesses as possible Rule 26(a)(2)(C) witnesses,
10 | and indicated that disclosure would be provided in accordance
11 | with that rule should these individuals be tendered as experts
12 | in addition to any tender as fact witnesses. And further
13 | witness identification material was filed in September. There
14 | was ample time for the DRA parties, prior to the filing of
15 | their in limine motion, to challenge the debtors' invocation
16 | of Rule 26(a)(2)(C) as violative of the Procedures Order.
17 | And, thereafter, it has been acknowledged here, Mr. Malhotra
18 | was produced for a deposition.

19 | There was a discovery dispute relating to the
20 | adequacy of the disclosures that was settled and withdrawn.
21 | We have a representation from the Oversight Board that it did
22 | upload to the database information concerning reliance
23 | documents for Mr. Malhotra.

24 | The Court finds that the dispute with regard to
25 | whether a report should have been provided for Mr. Malhotra,

1 rather than relying on the 26(a)(2)(C) description, is
2 untimely. The Court also finds that to the extent there was
3 any insufficiency, there is not prejudice to the DRA parties
4 warranting preclusion or limitation of the testimony of
5 Mr. Malhotra, because the DRA parties have had an ample
6 opportunity to investigate his qualifications, and the scope
7 and basis of his testimony, and to do any necessary work with
8 regard to rebuttal experts.

9 The issues with respect to additional specific
10 aspects of the declaration do not warrant the reopening of
11 discovery even for the one-hour deposition, which in this
12 compressed time schedule would be a significant commitment of
13 the parties' time and resources. Accordingly, the motion in
14 limine concerning the challenged 26(a)(2)(C) witnesses, which
15 is specifically pressed as to Mr. Malhotra, and has been
16 withdrawn as to the other two challenged witnesses, is denied.

17 We will now proceed to Agenda Item No. 4, which is
18 the DRA parties' motion in limine to exclude certain opinions
19 offered by the debtors' expert witness, Marti Murray. And the
20 first counsel I have listed to argue is Elizabeth Curran for
21 ten minutes representing the DRA Collateral Monitor.

22 Ms. Curran.

23 MS. CURRAN: Good morning, Your Honor. Can you hear
24 me okay?

25 THE COURT: Yes, I can, and I can see you. Good

1 morning.

2 MS. CURRAN: Good morning. I'm Elizabeth Curran from
3 Schulte Roth & Zabel. I'll be speaking today on behalf of
4 Cantor-Katz, one of the DRA parties, and I'm here with my
5 colleague, Mr. Cepeda, who I believe will be speaking on
6 behalf of the Servicer.

7 As Your Honor knows, the DRA parties moved to exclude
8 improper legal opinion offered by debtors' plan expert,
9 Ms. Marti P. Murray. Specifically, in her September 13 expert
10 report, Ms. Murray concludes that certain settlements
11 underlying the confirmation plan are unreasonable. It's our
12 position, Your Honor, that Ms. Murray has overstepped the
13 bounds of permissible expert opinion by making this legal
14 conclusion in her report, and that her testimony must be
15 excluded.

16 Your Honor, the case law here is clear that pursuant
17 to Rule 9019 of the Federal Rules of Bankruptcy Procedure,
18 it's the job of the Court to determine whether a settlement is
19 reasonable within the context of approving that settlement.
20 And the Court must reach this decision by evaluating various
21 factors, including the potential success of the litigation
22 versus future benefits of the settlement; likelihood of
23 complex litigation; and the competency and experience of
24 counsel, just by way of example.

25 What Ms. Murray did in her report is she essentially

1 mimicked the procedure that a court would take in that she
2 analyzed some of these very same factors, but then she stated
3 a legal conclusion that, based on that analysis, the
4 settlements are reasonable. It's well settled --

5 THE COURT: May I just interrupt you for a minute?
6 You said that in her report she analyzed some of the factors.
7 Are you representing that you find in her analysis all of the
8 factors, including those relating to evaluation of legal risks
9 and counsels' performance?

10 MS. CURRAN: Yes. She did evaluate -- the examples
11 that I gave just now, she did evaluate those in her report.
12 Some of the case law, you know, cites additional factors, and
13 I don't think the case law is necessarily completely aligned
14 with each of the itemized factors, so that's why I said some
15 of them. But the examples that I gave, she did analyze that
16 in her report, yes.

17 So just to continue, it's well settled that expert
18 testimony leads to the conclusion it must be excluded, and
19 here it's the Court that's required to evaluate these factors,
20 and then make an informed, independent judgment on
21 reasonableness. The conclusion itself cannot come from an
22 expert.

23 Now, in opposition, the debtors, they try and draw a
24 false distinction between reasonableness, and what they're
25 calling financial reasonableness, and what Ms. Murray referred

1 to in her deposition testimony as commercial reasonableness.
2 You know, call it financial, call it commercial, the argument
3 is really just a distraction. It's simply something that the
4 Oversight Board made up without any support in an attempt to
5 differentiate Ms. Murray's opinion.

6 But when you look at the factors that the Court is
7 considering that Ms. Murray evaluated, it's clear that there's
8 really no such distinction. Looking at the financial
9 implications of a settlement, and then making a determination
10 as to whether that settlement is reasonable is exactly what
11 the Court is tasked with doing.

12 Now, just by way of example, a few of the factors
13 that I discussed earlier are potential success of litigation
14 versus future benefits of settlement and likelihood of long,
15 drawn out, complex litigation. These factors are a way for
16 the Court to evaluate the financial impact of the proposed
17 settlement. The distinction that the Oversight Board is
18 attempting to draw, it doesn't exist. It's a complete
19 fiction. And simply calling Ms. Murray's opinions something
20 different than a legal conclusion, or having her disclaim that
21 this is what she's actually doing in her deposition, it
22 doesn't change what her opinion is.

23 Ms. Murray followed a very specific process in her
24 report. She analyzed many of the same factors, and then she
25 drew her legal conclusion. It's not happenstance that she

1 describes the settlements as reasonable. It's a deliberate
2 use of that terminology. The problem is it's not her purview
3 to make a legal conclusion after analyzing the facts. The
4 conclusion is left to the Court, and Ms. Murray has to be
5 limited to giving her expert opinion on the facts that can
6 help the Court reach its conclusion. She can't state the
7 conclusion herself.

8 And finally, Your Honor, in its opposition, the
9 Oversight Board made reference to the fact that the
10 confirmation requirements under PROMESA don't prohibit expert
11 testimony on this issue. The confirmation requirements under
12 PROMESA, they lay out what the debtors have to prove in order
13 to get the Plan confirmed. It's, frankly, irrelevant to
14 whether or not Ms. Murray's testimony is admissible under the
15 Federal Rules of Evidence.

16 Your Honor, for all the reasons discussed in the DRA
17 parties' briefing and highlighted today, we respectfully
18 request that the Court exclude Ms. Murray's improper legal
19 conclusions as to reasonableness of the underlying
20 settlements.

21 THE COURT: Would you speak for a moment to Rule 704,
22 which does permit an opinion to embrace an ultimate issue? So
23 even if I did discern some legal aspects in what the Oversight
24 Board is tendering as a financial analysis or commercial
25 analysis, would I be bound to exclude that opinion,

1 particularly in the context of this bench trial where I
2 understand what my responsibilities are?

3 MS. CURRAN: Sure, Your Honor. Our understanding of
4 Rule 704 is that while Rule 704 does permit an expert to
5 testify to the ultimate conclusion, they're still not
6 permitted to testify to a legal conclusion. The conclusion
7 has to be factual. In our opinion, simply adding an adjective
8 to Ms. Murray's conclusion doesn't take it from being a legal
9 conclusion to a factual conclusion. There is no distinction
10 there.

11 And, Your Honor, in terms of the fact that it's a
12 bench trial, we, of course, have utmost respect for your
13 judgment, and we understand that you would not consider
14 anything that shouldn't be considered. I think our position
15 is this really isn't a close call. She is using very
16 deliberate language. Her report says what it says. It's not
17 a close call, and we really don't think that her opinion
18 that -- or her legal conclusion that the settlements are
19 reasonable should be part of the record.

20 I hope that answers your question.

21 THE COURT: Thank you. Thank you.

22 Mr. Cepeda?

23 MR. CEPEDA: Yes, Your Honor. Alejandro Cepeda on
24 behalf of AmeriNational. I have nothing further to add at
25 this time.

1 THE COURT: Thank you, Mr. Cepeda.

2 I'll now turn to Ms. Dale for the Oversight Board.

3 MS. DALE: Good afternoon, Your Honor. It's Margaret
4 Dale from Proskauer Rose for the Oversight Board.

5 Your Honor, Ms. Murray should not be barred from
6 offering testimony regarding the financial reasonableness of
7 the settlements she discusses. There's nothing in PROMESA or
8 the Bankruptcy Code that would restrict her opinions regarding
9 the reasonableness of the financial settlements. If her
10 opinion is helpful to the Court, the Court can take that
11 opinion into account.

12 She's eminently qualified to offer these opinions.
13 They are factually based. The DRA parties do not object to
14 her CV or to any of her other opinions. Her status as a
15 restructuring expert is not challenged. Her past as a
16 principal investor, court-approved expert on restructuring,
17 her 35 years of experience all indicate her expertise.

18 The DRA parties, in fact, state that they do not
19 object to her opinions regarding whether the parties were
20 represented by qualified legal counsel. The downside risks of
21 certain of the stakeholders, and the impact of potential
22 litigations all were deemed to be within the scope of
23 permissible expert testimony that is used to assist the trier
24 of fact. That's from their motion, the DRA parties' motion at
25 page seven.

1 Ms. Murray is using the term "reasonable" as a term
2 of art based on her experience. It is in the context of
3 financial respons -- reasonability, excuse me, analyzed by a
4 financial and structuring expert. And as Your Honor
5 mentioned, she's not a -- withdrawn.

6 As Your Honor mentioned, under Rule 704, even if
7 Ms. Murray were to be giving an opinion on legal
8 reasonableness, which she is not, that is authorized to the
9 extent that her opinion embraces the ultimate legal issue. It
10 does not oblige the Court to take a specific view as to the
11 settlements themselves.

12 The opinions in question are supported by 15 pages of
13 analysis detailing facts, actors, and the background for each
14 of the settlements. Those -- that information was -- an
15 analysis was provided to assist the Court in its rulings, and
16 listing these facts and issues does not usurp the Court's
17 right to make the final legal determination. The motion
18 should be denied.

19 Unless the Court has any questions, I'm finished.
20 Thank you.

21 THE COURT: Thank you. I have no questions for you.

22 Ms. Curran, anything further?

23 MS. CURRAN: Yes, Your Honor. Just a few quick
24 points.

25 The Oversight Board is saying that there's nothing

1 that restricts Ms. Murray's opinion, but that's really not
2 true. The Federal Rules of Evidence restrict her opinion
3 because legal conclusions under Rule 702 are not helpful to
4 the trier of fact and must be excluded.

5 And in terms of Ms. Murray's qualifications, frankly,
6 we believe that her qualifications are irrelevant to this
7 inquiry. The DRA parties are not challenging her
8 qualifications at this time, but nothing qualifies an expert
9 to testify to inadmissible legal conclusions. I will note,
10 however, that during her deposition, Ms. Murray stated that
11 she actually wasn't sure if she had ever given expert
12 testimony on reasonableness of settlements.

13 And in terms of kind of the semantics argument, the
14 Oversight Board is saying that Ms. Murray is simply using the
15 word "reasonable," but she's not drawing a legal conclusion.
16 It really ignores the substance of her report. In the law,
17 words have meaning. Experts can't throw out words and ignore
18 that meaning. It's not enough to say, I use the word
19 "reasonable," but I'm not stating a legal conclusion. I'm
20 using it as a word -- term of art.

21 Her report says what it says. She followed a very --
22 a procedure, she analyzed factors, and then based on those
23 factors, she stated her legal conclusion. But reasonableness
24 must be determined as a matter of law, and Ms. Murray should
25 not be permitted to testify to that legal conclusion.

1 We don't disagree that she can testify to the
2 underlying facts. She can give testimony that will help the
3 Court understand and evaluate the underlying factors. What
4 she can't do is say that, based on my analysis of these
5 factors, these settlements are reasonable. And that's
6 precisely what she's doing, and we believe that her opinion
7 must be excluded.

8 THE COURT: Thank you. Give me just a moment.

9 Thank you for your patience. I will now address the
10 DRA Parties' Motion in Limine to exclude certain opinions
11 offered by the debtors' expert, Ms. Marti Murray, which is
12 Docket Entry No. 18342 in Case No. 17-3283. The Court has
13 considered thoroughly all of the filings and submissions.

14 The Court denies the motion. The challenged
15 conclusion regarding the reasonableness of the settlements
16 underlying the proposed Plan of Adjustment is presented based
17 on Ms. Murray's subject matter expertise in financial advising
18 and evaluating plans of reorganization based on agreements
19 between parties. The financial analyses in the report
20 sufficiently suggests that she has grounded her opinion in
21 relevant scientific data and drawn conclusions from that data
22 based on that -- her relevant financial experience.

23 So the Court understands Ms. Murray's opinion as
24 going to reasonableness from a financial or commercial point
25 of view, consistent with her background, which is within the

1 scope of permissible expert testimony contemplated by Federal
2 Rule of Evidence 702, rather than to any ultimate legal
3 question.

4 Furthermore, the Court understands and embraces its
5 own obligation to make a determination as to whether the
6 settlements meet the legal standard of reasonableness. We'll
7 deal with Ms. -- await Ms. Murray's testimony, and make
8 determinations as to its significance accordingly.
9 Accordingly, the DRA parties' motion to preclude Ms. Murray's
10 opinion, which is couched in the term reasonableness, is
11 denied. Thank you.

12 The next set of Agenda items under II go to a variety
13 of issues, beginning with a stipulation regarding the parties'
14 exhibits for the confirmation hearing. Would whoever wishes
15 to begin speaking to that, which was conveyed to the Court,
16 the stipulation in a letter from I believe it was Oversight
17 Board's counsel, please -- there, Ms. Dale has opened her
18 camera.

19 So, Ms. Dale, will you please begin?

20 MS. DALE: Thank you, Your Honor. Good afternoon.
21 Margaret Dale, from Proskauer Rose, for the Oversight Board.

22 Your Honor, in meeting and conferring with the
23 various parties who have submitted exhibits to be used at the
24 confirmation hearing, the parties had certain agreements
25 relating to those exhibits. We detailed those in a letter to

1 the Court that was dated October 27th, but was filed on the
2 docket, I believe, over the weekend. And I apologize, I don't
3 have the docket citation right now, but I can get that for the
4 Court.

5 THE COURT: I believe it was filed at Docket Entry
6 No. 18988.

7 MS. DALE: Thank you, Your Honor.

8 I would propose to just read those into the record,
9 if that's acceptable, and then to the extent the Court has any
10 questions, I can try to answer them.

11 THE COURT: You may proceed.

12 MS. DALE: Thank you.

13 So stemming from the meet and confer, the parties
14 have jointly agreed to the following reservation of rights
15 regarding the parties' exhibits for the confirmation hearing.
16 First, the parties believe objections to the relevance of a
17 particular exhibit will depend on pretrial rulings by the
18 Court on pending motions, including on motions in limine, and
19 other rulings made by the Court at the confirmation hearing.
20 Accordingly, subject to any other -- accordingly, subject to
21 any further order of the Court, the parties have agreed to
22 reserve objections on grounds of relevance with respect to all
23 exhibits.

24 The second reservation, in addition, in agreeing to
25 the admissibility of a document, no party is admitting,

1 acknowledging, or accepting as true statements in a document;
2 and all parties reserve the right to dispute matters in the
3 document and/or offer contrary evidence and/or dispute the
4 weight to be given to the document.

5 Finally, the stipulation between AAFAF and the
6 Oversight Board, which was filed at ECF No. 18733, is a
7 stipulation between those parties only, and has not been
8 agreed by any other party.

9 Your Honor, in addition, there's one further
10 stipulation. The Oversight Board agrees that Mr. Hein and the
11 DRA parties reserve and do not waive any objections based on,
12 one, the position that documents pertaining to settlement
13 negotiations or mediation may not be offered, because other
14 documents on that subject have been withheld; and/or, two, the
15 position that predecisional or deliberative communications or
16 documents may not be offered, because other predecisional or
17 deliberative communications or documents have been withheld;
18 and/or, alternatively, that the disclosure of such withheld
19 documents should be ordered.

20 That is the extent of the reservations that the
21 parties had agreed to in our meet and confer, Your Honor.

22 THE COURT: Thank you.

23 I note that in the same order in which I directed you
24 to file a copy of this letter on the record, I also directed
25 you to file early this week a list corresponding to the

1 division in the exhibit binders that you have submitted to the
2 Court of documents that the parties agree are admissible for
3 purposes of the hearing, subject to the reservations of rights
4 and documents whose admissibility is disputed, so that I can
5 keep track of those sorts of disputes.

6 MS. DALE: Your Honor, we are endeavoring to file
7 those lists. We have communicated with the various parties.
8 We're trying to get clarity and systematize the nomenclature
9 that's being used, so admit; admit, but not for the truth of
10 the matter asserted; and there are many exhibits on the
11 Oversight Board's list that are really for identification
12 only, Your Honor, including a large number of the statutes
13 that we refer to, which we would never intend to move into
14 evidence.

15 So we're endeavoring to get agreement on
16 nomenclature, so that the Court is receiving lists that look
17 alike, and is -- but we'll endeavor to do that in the time
18 that you identified for us to file those.

19 THE COURT: That's very much appreciated, and I
20 understand that it may be a great deal of work. It is better,
21 though, to have those issues sorted out, and the ability to
22 have the documents at hand prior to the commencement of the
23 trial, rather than scrambling and trying to agree on what
24 terms mean in the course of the trial.

25 I would also direct the parties that, again, in the

1 interest of the efficiency and clarity of the trial
2 proceedings, that if there is expected to be a dispute as to
3 relevance, or admissibility, or any other ground for potential
4 exclusion with respect to a particular segment of the trial
5 day, that they raise the issue with each other and determine
6 whether it's necessary to raise it with the Court for
7 resolution in advance of the testimony being presented, or at
8 least explain the context succinctly to the Court prior to the
9 examination of the witness, again, so that we don't have to
10 stop in the middle of an examination in order to provide
11 context for any ruling that may be necessary. Perhaps through
12 this procedure, we can avoid the necessity of some rulings as
13 the trial record develops.

14 I also have a question for you regarding the
15 Oversight Board and AAFAF's stipulation that's referred to in
16 the third indented paragraph on page 2 of the letter that had
17 to do with retirement benefit issues. Is that going to be
18 revised or withdrawn in any way in light of the legislation,
19 the Act 53-2021 legislation?

20 MS. DALE: Your Honor, I see that Mr. Friedman has
21 opened up his window, and I will allow -- if it's all right
22 with you, Your Honor, if Mr. Friedman could address that?

23 THE COURT: Yes. Thank you.

24 MR. FRIEDMAN: Good morning, Your Honor. It's Peter
25 Friedman from AAFAF.

1 That's the intention and the hope. We're obviously
2 working cooperatively with the Oversight Board. Now, based on
3 its disclosure of last week, it intends to move forward. If
4 there are no monthly benefit modifications, there's no reason
5 for a stipulation to be entered into with respect -- a factual
6 stipulation. That factual stipulation was predicated on a
7 plan that would contain the monthly benefit modification and
8 our arguments against it.

9 THE COURT: Very well. So you will file an
10 informative motion as soon as practicable informing the Court
11 and the other parties of your intentions in that regard?

12 MR. FRIEDMAN: Yes, Your Honor, both with respect to
13 the proposed factual stipulations, as well as AAFAF's other
14 proposed exhibits.

15 THE COURT: Thank you. Are there other stipulations
16 of fact that you anticipate at this point?

17 MR. FRIEDMAN: Not for AAFAF, Your Honor.

18 THE COURT: Ms. Dale?

19 MS. DALE: Your Honor, excuse me. Not for the
20 Oversight Board at this point, Your Honor.

21 THE COURT: Thank you.

22 Is there anyone else who needs to be heard in
23 connection with this Item II.1 on the Agenda, which was the
24 stipulations in the October 27th letter?

25 MS. DALE: Not --

1 THE COURT: I don't see any.

2 MS. DALE: Not that I'm aware of, Your Honor.

3 THE COURT: Thank you.

4 I don't see any hands raised, and so we will go on to
5 Item 2, which is the Oversight Board's objection to certain
6 exhibits offered by Peter Hein. Those exhibits are at docket
7 entry no. 18760-19, which is an October 15th, 2021,
8 declaration by Mark Elliott, and docket entry no. 18761-3,
9 which is an October 6, 2021, declaration by Mr. Elliott.

10 So I have argument by the Oversight Board, by
11 Mr. Firestein, for seven minutes as the first person
12 addressing the Court.

13 Mr. Firestein.

14 MR. FIRESTEIN: Yes. Excuse me, Your Honor. Good
15 morning. Can you hear me?

16 THE COURT: Yes. Yes.

17 MR. FIRESTEIN: Excellent. And, Your Honor, in light
18 of the stipulations that Ms. Dale just announced, that is, in
19 fact, why there are so few exhibit objections, and at least
20 from the Oversight Board's perspective, there are just these
21 two that I wanted to talk about.

22 And, for the record, Your Honor, good morning. At
23 least it remains morning in Los Angeles. Michael Firestein of
24 Proskauer Rose for the Oversight Board, as representative of
25 the Title III debtors.

1 As the Court correctly noted, there are two exhibits.
2 I'll refer to them as the two Elliott Declarations. There are
3 three grounds that relate to the Board's position on this.
4 One is this relates to a previously undisclosed witness; two,
5 that they were not noticed in conformity with the Court's
6 orders; and, three, even if you get past all of that, these
7 declarations, albeit short, are replete with inadmissible
8 hearsay, lacking in foundation and containing improper
9 argument.

10 The Court's Amended Procedures Order required that
11 all eligible creditors file, on September 6, a preliminary
12 fact witness list, including the topics about which each
13 witness would testify. Mr. Hein filed his list on September
14 6, and stated that he had no confirmation hearing witnesses to
15 list at this time. I can provide the ECF numbers if
16 necessary, but I don't know that it's really going to be
17 necessary for the Court's determination of these issues.

18 The Court's Procedures Order also required that all
19 parties serve opening expert disclosures. I'm unaware of
20 Mr. Hein serving any such disclosures. I checked the docket,
21 did not see one, and don't recall receiving one.

22 The Procedures Order, likewise, required that opening
23 expert reports be provided on September the 13th. Again, I'm
24 unaware of Mr. Hein having served any, and certainly not as it
25 relates to the witness at issue here.

1 Similarly, the Court's Procedures Order requires that
2 all parties serve rebuttal expert reports, if any, on October
3 6. For the same reasons, I'm unaware that Mr. Hein disclosed
4 any of those for this witness here.

5 Lastly, the Court's procedures orders require that
6 all parties file on October 22, among other things, a
7 finalized witness list. Mr. Hein identified no specific
8 witness he intended to present at trial. Instead, he filed at
9 ECF 18648 something he named an exhibit list, witness list,
10 and identification of previously filed declarations.

11 Buried in that document, Mr. Hein listed as the two
12 exhibits, which you've identified, Your Honor, at the docket
13 numbers, two prior signed declarations for Mr. Elliott, who
14 this Court might recall from the COFINA confirmation hearing.
15 One of those declarations was filed in connection with
16 Mr. Hein's voting extension motion, which was denied by the
17 Court. The other declaration was filed as part of the
18 hundreds of pages of Mr. Hein's Plan objection that he filed
19 on the 19th.

20 To be clear, to my knowledge, nowhere did Mr. Hein
21 actually file a witness list specifically identifying
22 Mr. Elliott as a supposed witness in this proceeding, like all
23 the other parties who wanted to offer direct testimony did.
24 Then, on October 25th, after the deadline to file witness
25 lists passed, and after Mr. Hein and I had a conversation in

1 which I indicated to him that I did not understand him to be
2 offering any particular witness list, he filed what he labeled
3 as an amended exhibit list, witness list, and identification
4 of previously filed declarations at ECF 18708.

5 In that document, Mr. Hein continued to list the two
6 Elliott Declarations as part of his exhibit list and not in a
7 witness list. He also listed at the back of that document the
8 same two Elliott Declarations, along with others, I think,
9 authored by him as part of some listing of declarations he
10 intended or indicated he intended to rely upon at
11 confirmation.

12 So that the record is clear, in my mind, that --
13 Mr. Hein never actually identified the witness in the manner
14 and time directed by the Court. Principally, he referenced
15 them deep in an exhibit list, which he disclosed on October
16 22nd. And despite his belated effort to correct that mistake,
17 he still really has not identified Mr. -- I'm sorry.

18 THE COURT: I'm sorry. Your sound cut out for a
19 minute.

20 MR. FIRESTEIN: Am I back now?

21 THE COURT: You are back. So if you would go back
22 to, despite his belated something, and that's where we lost
23 you.

24 MR. FIRESTEIN: Yes, Your Honor. Happy to do so.
25 Despite his belated effort to correct that mistake, he really

1 has not identified Mr. Elliott as a witness he intends to
2 present to the Court. Merely citing to exhibits filed as part
3 of other pleadings in one case regarding a motion that's
4 already been rejected by the Court is not a substitute for
5 compliance with the Court's Procedures Order. So there is no
6 recent basis to allow this late identified witness to be part
7 of the proceeding.

8 However, even if the Court were to consider either
9 one or both of these declarations, they fail to follow other
10 required procedures orders and are full of patently
11 inadmissible evidence --

12 (Sound played.)

13 MR. FIRESTEIN: -- including rank hearsay. He
14 presents himself as -- that being Mr. Elliott, as some sort of
15 alleged securities expert. And in each of those declarations,
16 he lists a number of licenses, and recites information
17 ostensibly based on his supposed expertise in the industry.

18 If he's offered as an expert under (a)(2)(B) or
19 (a)(2)(C), Mr. Hein hasn't complied with any of the Court's
20 requirements for doing so. There was no disclosure.
21 Alternatively, if he's trying to offer him as some sort of
22 percipient witness, no matter how he's being presented, the
23 nature of the testimony is utterly and completely
24 inadmissible.

25 I don't know how the Court wishes to deal with this.

1 These declarations are pretty short. They speak for
2 themselves. But, for example, in the one that was filed by
3 Mr. Hein on --

4 THE COURT: Yes. I would like you to identify the
5 information that you claim is inadmissible hearsay in each of
6 these documents as succinctly as you can.

7 MR. FIRESTEIN: I will. Unfortunately, there's no
8 numbered paragraphs, so I can't specifically do that, but I
9 will --

10 THE COURT: But there are pages --

11 MR. FIRESTEIN: Yes. Yes, there are. So let me --

12 THE COURT: -- and discernible paragraphs and
13 headings.

14 MR. FIRESTEIN: I will do this as easily as I can.
15 The October 6 declaration under the heading Puerto Rico
16 General Obligation Public Building Authority, et cetera, when
17 Mr. Elliott says, I've spoken with management and customer
18 service of all three and processed -- most notably the
19 representative at Schwab said, and then he quotes a statement
20 -- clearly it's hearsay and inadmissible. And that should be
21 stricken.

22 The next sentence as well is based upon information
23 presumably received from Schwab, because of it being so
24 complex --

25 (Sound played.)

1 MR. FIRESTEIN: I'm sorry, Your Honor. I'm happy to
2 just identify these, or submit them in an informative motion
3 if the Court prefers it to be done that way. There's quite a
4 few. That entire paragraph is, frankly, full of information
5 that he's received from third parties, clearly being asserted
6 for the truth of the matter.

7 And as well, in the next sentence regarding the
8 so-called price to be paid for each CUSIP at a 30 dollar fee,
9 there's no foundation, and that's hearsay.

10 The same type of information is contained in the
11 other declaration, which was --

12 THE COURT: I'm going to give you one additional
13 minute to characterize what's problematic in the other
14 declaration --

15 MR. FIRESTEIN: Yes, Your Honor.

16 THE COURT: -- so you --

17 MR. FIRESTEIN: Yes, Your Honor.

18 THE COURT: You have one extra minute.

19 MR. FIRESTEIN: It's easy to do, because a lot of it
20 is repetitive. He restates some of the same things. If you
21 look at the other declaration under Puerto Rican General
22 Obligation heading, he once again recites his conversations
23 starting in the second sentence with, management and customer
24 service of all three, and speaks to what those particular
25 individuals or companies have implemented. And that is

1 clearly based upon conversations he's had with them, and that
2 is inadmissible hearsay.

3 In the next paragraph, he recites once again the
4 quoted contents of discussions with Charles Schwab, clearly
5 intended to be submitted for the truth of the matter. And
6 that would relate all the way down to the Prime Clerk
7 suggestion. And, frankly, it continues on until the next
8 sentence about Prime Clerk, and following again what Charles
9 Schwab ostensibly required regarding some number of pages that
10 are necessary.

11 Indeed, the paragraph that says, furthermore, they
12 must verbally confirm, you know --

13 (Sound played.)

14 THE COURT: Thank you.

15 MR. FIRESTEIN: That is all information from the
16 additional brokers, and the rest of the page --

17 THE COURT: Thank you, Mr. Firestein.

18 MR. FIRESTEIN: Thank you, Your Honor.

19 THE COURT: I will hear from Mr. Hein.

20 MR. HEIN: Your Honor, can you hear me now?

21 THE COURT: I can hear you. I can't see you. Would
22 you turn your camera on, please?

23 MR. HEIN: Yes.

24 THE COURT: I see you now. Thank you.

25 MR. HEIN: Great. Thank you.

1 THE COURT: You may proceed.

2 MR. HEIN: Sure. So I did timely identify the
3 Elliott Declarations as declarations in my October 22 filing,
4 docket 18648, which was entitled Exhibit List, Witness List,
5 and Identification of Previously Filed Declarations. Your
6 Honor may recall that the September 6 lists were preliminary.
7 If one filed a list on September 6, one was entitled to amend
8 it, provided one met the October 22 deadline, which I did.

9 Mr. Elliott is not being offered as an expert here.
10 He's being offered as an individual who is providing
11 information with respect to the factual experience he
12 encountered in trying to go through the ATOP delivery and
13 voting process.

14 So I did include the Elliott Declarations in my
15 exhibits, because they had been exhibits to my objection, as
16 Mr. Firestein has pointed out, and to other papers I had filed
17 previously. But the Elliott Declarations were, in addition,
18 listed in the separate section in my docket 18648 filing
19 titled, Declarations List. That's 18648, page 12 of 13. And
20 there I list the Elliott Declarations by name and date, and
21 specify the docket numbers and docket pages at which the
22 declarations had been filed. So one didn't have to hunt
23 through a great group of papers, I provided that information
24 there.

25 After the Oversight Board's attorneys had told me

1 that they'd be objecting to the Elliott Declarations being
2 offered, I then, on October 27th, refiled my informative
3 motion on the Exhibit B, just to be clear that I was not
4 offering the Elliott Declarations as exhibits, they were being
5 offered as declarations. And that's 18861, page 2 of 20, as
6 well as I believe it's page 12 and 14.

7 Both of the original orders establishing procedures
8 and deadlines, this is docket 17640, and also the amended
9 order, 18394, in a section called Summary of Deadlines, set
10 October 22 as the deadline for parties to file finalized
11 witness lists and exhibit lists, and October 25 as the
12 deadline for parties to file witness declarations to be used
13 at the confirmation hearing.

14 And I submit, Your Honor, I met the deadlines in
15 those two orders, and as I pointed out, my October 22 filing
16 is entitled, Exhibit List, Witness List and Identification of
17 Previously Filed Declarations. It was filed on October 22.
18 The Elliott Declarations that were listed in that filing had
19 previously been filed, and thus were on file in the docket
20 prior to October 25.

21 I also filed an amended informative motion, and this
22 was timely on the morning of October 27. That's docket 18821,
23 which states in Exhibit B, which is at docket 18821, page 4 of
24 20, the party -- witness cover sheet, that witness
25 declarations being offered by me all previously filed were

1 identified in 18648, page 12 of 13, the filing that was made
2 on October 22. And there is no surprise here.

3 On October 26, in the course of a meet and confer
4 over exhibits, I was clear, and made clear that I was offering
5 the Elliott Declarations as declarations. I referred to my
6 list of previously filed declarations, including the two by
7 Mark Elliott, in my October 22 filing.

8 Your Honor's docket 18502 order -- and I just want to
9 make this point, although I'm not sure that the Oversight
10 Board is even arguing this, in paragraph 4(a)(D), if a party
11 wishes to cross-examine any declarant or present by rebuttal
12 testimony, they should so state. And I did not believe it was
13 necessary to present Mr. Elliott as a live rebuttal witness,
14 so in my Exhibit B that I timely filed the morning of the
15 27th, that's docket 18821, I said three things: One, on
16 Exhibit B I said, witness declarations being offered by me,
17 all previously filed, were identified in 18648, page 12 of 13,
18 by list of the exhibits, witnesses, and previously filed
19 declarations.

20 I also said that apart from offering such
21 declarations, I do not contemplate offering an affirmative
22 live witness at this time, but reserve all rights. And I
23 requested the opportunity to cross-examine certain FOMB
24 declarants.

25 In short, I read Exhibit B to apply to its desire to

1 cross-examine a witness live, or present live rebuttal
2 testimony, and -- because the Court's Order had previously
3 directed that any testimony by the witness should be offered
4 by declaration. So that, I think, addresses the technical
5 issue being raised.

6 I did not hear, and I'd be happy to address it if I
7 misheard and didn't hear it, any issue as to relevance. So
8 let me turn to the issues of hearsay and lack of foundation.

9 First of all, on the lack of foundation issue,
10 Mr. Elliott clearly has a foundation for the 30 dollar fee.
11 That is something which he would know by virtue of being a
12 bondholder and representing, as an investment adviser, other
13 bondholders, what the -- that they're being charged to make
14 the tenders. And it is, indeed, true, and I've submitted
15 documentation as well on this from Merrill Lynch, that many
16 brokerage firms will charge the individual retail investors 30
17 dollars for each what they call voluntary corporate actions,
18 which this falls within. So the individuals are being charged
19 30 dollars, or at least are subject to that charge if they
20 can't persuade their broker to waive it.

21 In terms of hearsay, one of Mr. Elliott's statements,
22 and I didn't hear Mr. Firestein comment on this, was that the
23 Prime Clerk number, when called, just provided a recorded
24 message stating that someone should leave a message and they
25 would try to call back in three days. And I think Mr. Elliott

1 | said he didn't get a call back. The Prime Clerk answering
2 | machine is a statement by FOMB's agent, and, in any event, the
3 | statement of the Prime Clerk recording answering machine that
4 | Prime Clerk would try to call back in three days is not
5 | offered for the truth, but for the fact that when Mr. Elliott
6 | called, that's the recording he got. He got this recording
7 | saying, leave a message; we'll try to call back in three days.
8 | So that is not hearsay.

9 | As to the statements of Charles Schwab
10 | representatives, these are not being offered for the truth,
11 | but for the fact that they were made in response to Elliott's
12 | efforts to help himself and his clients navigate the complex
13 | ATOP delivery and voting process. So whether or not what the
14 | Schwab people were saying -- if the Schwab people were saying,
15 | well, we're not going to help you, you have to do X, whether
16 | or not that's true, whether or not someone, in fact, has to do
17 | X is being offered for the fact that Elliott, in trying to go
18 | through and navigate the process for him and others of his
19 | clients, was being told that.

20 | So it's -- what's relevant here and what is being
21 | offered for this is the response that Elliott was given.
22 | Whether that reflected a truthful statement by the Schwab
23 | person or not, it's relevant to show what Elliott was told.

24 | (Sound played.)

25 | MR. HEIN: So I think to conclude, the point that I'm

1 offering the Elliott Declarations for, I think -- and why it's
2 relevant is I think evident from FOMB's own legal memorandum.
3 They're pointing to the fact that retail class votes to accept
4 the Plan support FOMB's position that the Plan should be
5 confirmed, that people find this something that's desirable.

6 Elliott makes the point that the ATOP delivery and
7 vote process was extremely burdensome and complex, very
8 difficult for small retail investors to navigate, even people
9 that had someone like Elliott trying to help them, that this
10 prevented or deterred people from voting. He speaks from his
11 experience in dealing with three different brokerage firms.

12 Elliott's declaration thus supports my position that
13 the retail votes can't be viewed as a true gauge of sentiment.
14 And this is in addition to the fact, and the point I've made
15 in my objection, that the votes are not the product of a free
16 and fair choice based on adequate information. The whole
17 voting process was coercive here. Retail investors were told,
18 in essence, that if you vote to accept, you may receive this
19 added fee. If you vote to reject, this is going to happen
20 anyway, but you may not get the fee. No surprise that there
21 was overwhelming accept votes from people that are told, if
22 you want more money, you have to say accept. If you vote
23 reject, you're not going to get that incremental compensation,
24 but this is going to go through anyway.

25 That was the basic message in the solicitation

1 materials. And, therefore, based on the difficulty that
2 people had in tendering through the ATOP delivery process --

3 (Sound played.)

4 THE COURT: You can finish your point.

5 MR. HEIN: Finish the sentence?

6 THE COURT: Yes.

7 MR. HEIN: And this inherently coercive aspect of the
8 voting process, the retail votes in favor are not a true
9 gauge, in my view, of the retail sentiment about whether this
10 is actually a good thing for retail investors.

11 Thank you, Your Honor.

12 THE COURT: Thank you.

13 Mr. Firestein?

14 MR. FIRESTEIN: Thank you, Your Honor.

15 Mr. Hein's recitation of his legal issue does not
16 overcome the hearsay defects that are present in the
17 declaration. Secondly, the 30 dollar fee reference, where he
18 indicates that he's describing what he does as an investment
19 advisor, as a professional, essentially as an expert advising
20 on this is one of the reasons why perhaps he should have been
21 designated as an expert witness.

22 That aside, I want to return, if I could, to the
23 second declaration to further identify the sentences, if
24 it's --

25 THE COURT: I'm sorry. You need to speak up a little

1 bit more for the microphone. I'm losing the ends of your
2 sentences.

3 MR. FIRESTEIN: If it's acceptable, I would rather --
4 I would like to return to the second declaration to identify
5 what I think are the offending sentences where I left off
6 last.

7 THE COURT: Yes, you may.

8 MR. FIRESTEIN: Thank you, Your Honor.

9 In the second declaration, on the second page in
10 this -- I left off in the middle, it says, after being
11 presented with this, and then he writes, essentially
12 impossible to understand statement, of course it's hearsay
13 with respect to the statement that was received, and an
14 improper argument, as opposed to what the content of that is.

15 (Sound played.)

16 MR. FIRESTEIN: The next section, a little below
17 where it begins, if clients do not attest they have fully read
18 and understand these complicated documents, and then he goes
19 on, that remains hearsay through the end of that sentence.
20 And, frankly, to the extent it relates to the retail support
21 fee, that class has already approved they're going to get it.
22 I don't believe that that's relevant relative to this.

23 On the next page, in the paragraph that begins,
24 furthermore, the last parenthetical in that paragraph which
25 begins, indeed, a securities professional may be precluded

1 from putting unsolicited foreign media, that reference, that's
2 classic expert opinion. He can only be doing that based upon
3 his position, and it's a reason why I submit that he's an
4 undisclosed expert. That sentence should be stricken
5 regardless.

6 In the next paragraph that begins, furthermore, most
7 of the little written information sent to clients provides no
8 statement, that's once again an effort to recite the contents
9 of a document in some regard. The document will say whatever
10 it says, but his characterization of it is hearsay.

11 In the next paragraph that says, furthermore, in my
12 case, I've taken extraordinary efforts, the concluding
13 sentence there is improper argument by Mr. Elliott.

14 In the next paragraph regarding the number of hours
15 it takes to answer the phones, I don't understand what the
16 relevance of that is.

17 And at the top of the next page, I also do not
18 understand what the relevance is where the sentence is that
19 begins, and while I waited for one client, I couldn't wait for
20 others, the countless small investors. That section just has
21 nothing to do with anything that I understand is relevant for
22 confirmation.

23 And, lastly, Your Honor --

24 (Sound played.)

25 MR. FIRESTEIN: --the second to last paragraph, if I

1 could just finish this --

2 THE COURT: Yes.

3 MR. FIRESTEIN: -- Your Honor, regarding secret
4 negotiations, favoring negotiating parties, Mr. Elliott had
5 nothing to do with this. He was not even a party to any of
6 this. It's completely without foundation and argumentative,
7 as is the last sentence concerning a lack of foundation on the
8 IRS tax deadlines.

9 With that, Your Honor, I'll submit.

10 THE COURT: Thank you.

11 So I take it -- well, would I be correct in
12 understanding you also to be arguing that to the extent
13 Mr. Hein is claiming that he is offering these statements
14 attributed to Schwab not for the truth of them, but for the
15 fact that they were said, is there a 403 element in your
16 application?

17 MR. FIRESTEIN: Yes, Your Honor. I don't really
18 understand how that moves the needle, other than being, you
19 know -- other than being, you know, sort of far afield, and
20 whatever limited relevance it would have would be outweighed
21 by the supposed impact of what that sentence might mean, or
22 those characterizations might mean on the record.

23 THE COURT: Well, I am directing you to supplement
24 this oral discussion by filing I guess it would be an
25 informative motion tomorrow by noon identifying, annotating

1 each of these exhibits to identify the portions objected to
2 and the grounds of the objection. So that would be November
3 2nd at noon. Then by November 4th at noon, Mr. Hein can file
4 his response, and I will take it under advisement pending the
5 filing of those documents.

6 Mr. Hein, once he identified these as declarations,
7 has filed declarations, and so I would -- I am going to deal
8 with the content and admissibility of these on the merits,
9 rather than on the timing issue, as he does have an argument
10 with respect to witness disclosure deadlines.

11 He is arguing that he is not offering Mr. Elliott as
12 an expert, which, as Mr. Firestein has shown, provides another
13 ground for Mr. Firestein's argument as to the propriety of
14 this as a set of fact witness declarations, but I need further
15 clarity from the Oversight Board. I'm giving Mr. Hein the
16 opportunity to respond to that further clarity before I rule
17 on his declarations.

18 MR. FIRESTEIN: Your Honor, may I just make one
19 inquiry? I want to make sure I understand the Court's request
20 or directive on the submission.

21 THE COURT: Yes.

22 MR. FIRESTEIN: We're simply going to quote the
23 language, put the basis of the objection, but we're not going
24 to submit any further discussion or debate on either the
25 expert issue or on the disclosure point; is that right?

1 THE COURT: That is correct.

2 What I would actually prefer that you do is mark by
3 box, or bracket, or shading the particular language to which
4 you are objecting, and then provide a key as to the basis of
5 the objection, so that when I rule, I can rule by reference to
6 the exhibits themselves without necessarily creating a
7 document that then pulls the language of the exhibits out.

8 MR. FIRESTEIN: May I make one further inquiry on
9 this, to be sure? That makes it easier. And we'll simply
10 attach the declarations as an exhibit to the informative
11 motion with the shading, and bracketing, and the key that will
12 be like A, B, C, which will be directed to whether it's
13 relevance, or foundation, or hearsay, so that the Court will
14 have it handy?

15 THE COURT: Yes.

16 MR. FIRESTEIN: Fine. Thank you.

17 THE COURT: Thank you.

18 All right. It is now time for the lunch break, and
19 so we will resume at 2:10. Those who are on the AT&T line
20 should hang up and dial back in for 2:10.

21 Let me just ask my Zoom masters what's best with
22 respect to the Zoom participants. Give me just a moment.

23 Sorry for the delay. Zoom participants, you should
24 log back in by two o'clock so that you can be let in from the
25 waiting room.

1 Thank you all very much. We will see you at 2:10.

2 (Recess taken.)

3 (Proceedings reconvened.)

4 THE COURT: Good afternoon, everyone. This is Judge
5 Swain speaking again, and we are continuing the pretrial
6 conference on the continuation of the confirmation hearing on
7 the proposed Plan of Adjustment on behalf of the Commonwealth,
8 ERS, and PBA.

9 A couple of reminders. There is to be no recording
10 or retransmission of any of the content of this hearing.
11 Please keep your cameras off when you are not speaking to a
12 matter; and to the extent you want to be recognized, use the
13 "hand raise" feature on Zoom, and open your camera so that we
14 can see that you want to speak.

15 The next Agenda item is III, which has been labeled
16 Additional Matters in the Agenda prepared by the Oversight
17 Board. The first item in that section of the Agenda is
18 labeled Witness Declarations, and the inquiry is whether the
19 parties should file amended witness declarations to include
20 references to the parties' exhibit lists. The answer to that
21 question is an emphatic yes. That would be very helpful to
22 the Court.

23 So would filing by the end of the day Wednesday be
24 feasible? I see that Oversight Board's counsel have their
25 cameras on, and so I will start with Ms. Dale or Mr. Rosen on

1 that one.

2 MS. DALE: Thank you, Your Honor. Margaret Dale.

3 I think by the end of the day Wednesday should be
4 fine. The only other thing I wanted to mention in connection
5 with that is that when we talk about some of the additional
6 matters, Plan modification, proposed confirmation order, and
7 the notice, which is number five, which Mr. Rosen and
8 Mr. Bienenstock are requesting to handle, we also wanted to
9 raise an issue of some short supplemental declarations that
10 are going to be needed in connection with those other items.
11 But yes, by the end of the day Wednesday.

12 And, Your Honor, just for clarity, each party to file
13 the witness declarations from October 25th but with respect --
14 including just the exhibit references to their exhibit lists,
15 correct?

16 THE COURT: Yes. Each party to refile its own
17 proffered declarations, including the exhibit designation in
18 the exhibit list with the ECF file number for that exhibit, to
19 the extent there are specific references to exhibits in the
20 declaration, so that I don't have to try to cross-correlate
21 and dig things up myself.

22 MS. DALE: Thank you, Your Honor.

23 THE COURT: That will be much appreciated, and of
24 course we will deal with other deadlines as we go along.

25 There is a raised hand from counsel for DRA. I think

1 it's Mr. Mintz. Mr. Mintz?

2 MR. MINTZ: Yes, Your Honor. Good afternoon. Doug
3 Mintz for Cantor-Katz, a DRA party.

4 We will be able to submit new declarations on
5 Wednesday. Are those to be resigned by the witness?

6 THE COURT: No. That is not necessary. You can /S,
7 and indicate that this is the updated version.

8 MR. MINTZ: Yes, Your Honor. That's fine.

9 I guess we'd also need a sense -- and maybe this will
10 come up as we continue through this afternoon's discussion,
11 whether the -- to what extent the Oversight Board and/or AAFAF
12 is planning to submit new testimony related to the revisions
13 of the Plan, regarding analysis that had to be revised based
14 on new numbers and things like that.

15 We'd like to understand that as soon as possible, and
16 obviously that also impacts the testimony of Mr. Prager, and
17 potentially others, depending on what that additional
18 testimony might consist of.

19 THE COURT: Yes. Well, the next Agenda item is Plan
20 Modifications, and I certainly intended to hear and inquire
21 after all of the ramifications of proposed modifications,
22 which would include evidentiary modifications, and what it is
23 the Oversight Board is proposing to do, both substantively and
24 procedurally.

25 MR. MINTZ: Thank you, Your Honor.

1 THE COURT: So do you have anything further at this
2 point, Mr. Mintz, before I turn to Mr. Rosen?

3 MR. MINTZ: I'll only note that we'll wait to hear
4 obviously where that proceeds, and come back once we hear
5 that.

6 THE COURT: Okay. Thank you. If you'll put then
7 your little hand down, and you can put it back up when you
8 want to speak. Thank you.

9 Mr. Rosen, this is a whole new world of technology.

10 MR. ROSEN: I just enjoyed the reference to the
11 little hand, Your Honor, but thank you.

12 Your Honor, thank you very much. And if you don't
13 mind, I'll probably tag team this with Mr. Bienenstock, as we
14 have in the past, because Items 2, 3, and 5 are somewhat
15 together; and they go to, also, the reference to the
16 supplemental declarations that might be filed.

17 Your Honor, we have been working very closely with
18 the AAFAF team, as well as trying to be responsive to the --
19 some of the objections that we felt needed a response to, and
20 what were reflected in the reply chart that we filed last
21 Wednesday, to make certain modifications to the Plan, most
22 notably, things like the releases that some people have raised
23 some questions about.

24 We've also been working with VTM, one of the dairy
25 producers, to arrive at some language that worked for them;

1 working with the med center's online language that referred --
2 that they did require, so we do have a bunch of modifications,
3 Your Honor, that address some specific objections, but of
4 course don't really affect in any way the economics associated
5 with the Plan.

6 Likewise, Your Honor, with the passage of the
7 legislation and the acceptance by the Oversight Board, we are
8 making modifications consistent with the legislation, most
9 notably, Your Honor, as you know, with respect to the removal
10 of the monthly benefit modification effect to the Plan of
11 Adjustment. So all of that, Your Honor, we're trying to --
12 and we will be running by these parties over the next few days
13 the language to make sure that everything works out for them.

14 And we do anticipate, Your Honor, filing the Plan,
15 what I'll refer to as the Eighth Amended Plan on November 4th.
16 I know that, based upon the conversation you just had with
17 Ms. Dale, there was a reference to filing the amended
18 declarations by the 3rd. I just may have to coordinate that,
19 Your Honor, and accelerate the filing of -- the filing of the
20 Plan to coincide, because I wouldn't want declarations to be
21 filed referring to a plan that has yet to be filed. So --

22 THE COURT: Yes.

23 MR. ROSEN: -- we'll try and work that out, Your
24 Honor.

25 Likewise, we've been revising the form of

1 confirmation order. As you know, Your Honor, consistent with
2 the Scheduling Order, we filed that Confirmation Order, and
3 then we received reservation of rights, or some objections, or
4 some outright comments to that. Some of them have been
5 extremely informal and very helpful, like from fiscal agents
6 and things like that, Your Honor, to some comments from the
7 Monolines. And we will be circulating that probably very
8 quickly to those parties, as we've tried to address those
9 concerns.

10 And we will refile that, Your Honor, when we file the
11 Eighth Amended Plan, and coincide that with the filing of
12 those amended or supplemental declarations, which, Your Honor,
13 to address Mr. Mintz' comment -- and Mr. Bienenstock will go a
14 little bit more in depth -- we do not anticipate that these
15 supplemental declarations will be in any way lengthy. They
16 are also quite short, and just deal with the legislation
17 specifically.

18 So that is our timeframe, Your Honor. As I said, we
19 had hoped to do it on Thursday, but if you really are looking
20 for those declarations on Wednesday, we will try to accelerate
21 that. But I would love if we could possibly push that date
22 back, notwithstanding your comment, to Thursday to make it
23 easy, because I really want to give people an opportunity to
24 get back to us and try to integrate some of their concerns.

25 THE COURT: Well, I understand that you want to be

1 able to have necessary and appropriate back and forth with
2 people whom you're trying to accommodate, but the objectors,
3 the Court, and the rest of the world also need to have
4 sufficient time before we begin the trial to review, and to
5 recalibrate any preparation, and to prepare efficiently for
6 the trial on the eighth amendment -- Eighth Amended Plan.

7 To the extent there are adjustments to objections or
8 any reaction that your amendments properly trigger before the
9 confirmation hearing starts, by midnight Wednesday is
10 necessary.

11 MR. ROSEN: Midnight Wednesday will be fine, Your
12 Honor. We'll make that work.

13 Your Honor, if I could, then I'd like to hand the
14 virtual mic over to Mr. Bienenstock, so he can talk about Item
15 5. Even though it's slightly out of order, I think it really
16 dovetails with what I was just referring to.

17 THE COURT: That's the notice to the employees and
18 retirees?

19 MR. ROSEN: It is, Your Honor.

20 THE COURT: All right. Let me just -- it may be that
21 Mr. Bienenstock would speak to this, but do you anticipate
22 changes to your economic evidence and your feasibility
23 representations based on the economic impact of the changes
24 that I imagine you are making to make the Plan consistent with
25 Act 53?

1 Since you've just said that you're going to be
2 talking about short supplemental declarations, I'd like to
3 have a better idea of how that relates to your core evidence
4 regarding the operation and feasibility of the Plan.

5 MR. ROSEN: Your Honor, yes, I think Mr. Bienenstock
6 will address the short -- the feasibility question right now.

7 THE COURT: Thank you very much.

8 So, Mr. Bienenstock, and we're on Item 5.

9 MR. ROSEN: Thank you, Your Honor.

10 MR. BIENENSTOCK: Good afternoon, Your Honor, and
11 good morning to those in California. And thank you for the
12 opportunity to do this.

13 As Mr. Rosen mentioned, I need to address what is in
14 the Agenda as Notice to Employees and Retirees, and as Your
15 Honor will see, that covers some of Your Honor's questions
16 about feasibility and updates to various pleadings.

17 THE COURT: I'm sorry. Just before you go on, I've
18 been asked to clarify that by midnight Wednesday, I mean 11:59
19 PM Atlantic Standard Time on Wednesday, which is also still
20 Eastern Daylight Time, since we are in a number of time zones.

21 MR. ROSEN: Thank you, Your Honor.

22 THE COURT: Thank you.

23 Sorry, Mr. Bienenstock.

24 MR. BIENENSTOCK: No problem. Thank you.

25 So as Your Honor has mentioned, Act 53-2021, because

1 it is a conditional authorization of the new debt to be issued
2 under the Plan, is going to change some of the cash flow
3 projections, feasibility comments, et cetera, for the simple
4 reason that the requirement that everyone agrees to, that that
5 statute requires, in order for the debt authorization to be
6 effective, is that the Plan delete its monthly benefit
7 modification, which is the reduction of up to eight and a half
8 percent of monthly pensions above certain amounts.

9 So that will obviously cost the Commonwealth more
10 money, and that will cause, you know, a change in projections
11 based on available cash flow, et cetera. And for that reason,
12 if nothing more, we have to change, or at least submit
13 updated -- or supplements to declarations that go into
14 projections having to do with cash flow of the Commonwealth.

15 The Act itself has very clear, express language that
16 expressly authorizes the new debt if the monthly benefit
17 modification is deleted from the Plan. And the Board believes
18 that that's basically the proposition of Act 53-2021, that we
19 delete the monthly benefit modification, the new debt is
20 authorized.

21 There is other language in Act 53-2021, phrases,
22 sentences here and there referring to zero cuts to pensions.
23 And simply looking at Reorg Research, the afternoon the
24 legislation was made public, immediately there were those who
25 contended reportedly that for the new debt to be authorized,

1 it's not good enough for the Plan to delete the monthly
2 benefit modifications, but the Plan must also eliminate what
3 we've referred to previously as the pension freeze, and the
4 elimination of cost-of-living adjustments to pension payments
5 in the future.

6 What we've referred to as "the freeze" has
7 alternately been explained from time to time as the conversion
8 of the Commonwealth's old defined benefit plan to the new
9 defined contribution plan. The freeze represents the concept
10 that the former defined benefits, which would increase as wage
11 levels increase, without any limit, et cetera, would no longer
12 be taking effect, because we're eliminating the defined
13 benefit plan and making it a defined contribution plan, where
14 employees will actually own their contributions to their
15 pensions going forward.

16 There are two issues that that different
17 interpretation of the statute creates. One is, for the Court
18 to confirm the Plan, on several levels the Court would have to
19 decide if by eliminating the monthly benefit modification, but
20 not eliminating the freeze or the elimination of the
21 cost-of-living adjustments, the Court would have to decide if
22 that entitles us to the debt authorization. Otherwise, the
23 Plan would not be implementable. It also wouldn't satisfy the
24 conditions in the Plan with the GO debtholders.

25 The second issue that that creates is even if the

1 Court agreed with the Oversight Board that only the monthly
2 benefit modification needs to be deleted from the Plan, it
3 opens up the risk that, in the future, an employee, or
4 retiree, or some party in interest would contend in this court
5 or in another court that the debt authorization really is not
6 valid, because we didn't eliminate the freeze or the
7 cancellation of the cost-of-living adjustments.

8 The way the law's severability provision works is the
9 whole thing blows up, including the debt authorization, if we
10 haven't satisfied the conditions, and there's no limiting
11 factor that says the conditions have to be satisfied at
12 confirmation if -- from our point of view, if God forbid a
13 court were to decide two years later that there were other
14 conditions to be satisfied and they had not been satisfied,
15 the debt authorization could blow up in the future.

16 Those are obviously risks that the Oversight Board
17 cannot and will not take. We don't believe the Commonwealth
18 should want to take them, or anyone holding or trading the
19 debt should want to take or would take. And the Court might
20 have strong feelings about whether it would want to launch a
21 reorganized Commonwealth into that risk situation. So suffice
22 it to say, from the Oversight Board's point of view, it's an
23 intolerable risk, and it has created the need for certainty
24 that is binding on all parties in interest.

25 And the way we propose to procure that certainty, one

1 way or the other, whichever way the Court interprets the
2 statute, is to give notice to all current and former employees
3 and retirees that, in connection with confirmation, the Board
4 will be requesting certain additional findings in the proposed
5 confirmation order, making crystal clear what the statute does
6 and does not require in order for the debt authorization to be
7 valid and to be permanent.

8 And today, possibly within a matter of minutes or
9 hours, we'll be filing an urgent motion with Your Honor asking
10 Your Honor to approve the form of notice we proposed to serve
11 largely by publication, obviously by e-mail or mail where
12 possible. But since the Oversight Board doesn't personally
13 have addresses and contact data for employees, we're going to
14 be asking for publication notice, except where Prime Clerk
15 does happen to have and can use electronic data for other
16 notice. We'll obviously be giving actual notice to the
17 unions, and the government, and the people that we know and
18 have contact data for.

19 So we'll be asking the Court to approve a form of
20 notice which will notify all parties in interest of the
21 findings we will be asking for, a time to object to them, and
22 a time for the Oversight Board to reply to the objections.
23 And these dates will occur during the confirmation hearing,
24 but in plenty of time so that well before evidence is closed
25 and there is final argument, or whatever the Court desires at

1 the end, all the records will be complete as to these
2 additional findings.

3 And we believe that if we proceed this way, then the
4 findings Your Honor makes will not only be binding for
5 purposes of confirmation, but will be binding on all parties
6 who were served with this notice, with the express notice of
7 the relief we're seeking, and it will eliminate, to the
8 maximum extent possible, the risks I mentioned earlier going
9 forward.

10 There is -- as Your Honor probably knows, there's a
11 lot of precedent for this in cases where this procedure was or
12 was not followed, you know. Where it was not followed perhaps
13 was the ignition switch defect in the GM bankruptcy, but it
14 was followed in other situations where everyone was given
15 notice and, therefore, bound by the confirmation order.

16 That's basically what I wanted to explain to the
17 Court and all the parties attending this hearing, and I can
18 answer whatever questions the Court may have.

19 THE COURT: Well, let me start by asking you whether
20 this -- and I see that Mr. Hein has his hand up, but I'm going
21 to ask a couple questions first, and then I'll call on
22 Mr. Hein.

23 First, is this notice one that is going to provide a
24 legal, analytical rationale for the requested interpretation,
25 or is it just going to say that the Court is going to ask for

1 the interpretation and, you know, the purpose of it is X? So
2 please describe what you have in mind there.

3 MR. BIENENSTOCK: Okay. Sure, Your Honor.

4 Currently, the form of notice we're proposing simply
5 notifies everyone of the proposed findings and conclusions
6 we'll be asking for in the confirmation order. The urgent
7 motion that we're about to file summarizes the rationale, and
8 I've summarized it in my earlier remarks, as to why we think
9 the statute has a plain meaning. And it is what we say it is,
10 but the notice does not provide that rationale.

11 THE COURT: So how is it that on, you know, what will
12 be quite short notice, you believe that without the context
13 that you've provided here today, the employees and retirees
14 who are the targets of the notice can make an appropriately
15 reasoned decision as to whether to object?

16 MR. BIENENSTOCK: As our urgent motion says, and as
17 I've explained, the only express language in the statute is
18 language that says that in section 104, that the debt is
19 authorized if the monthly benefit modification is deleted from
20 the Plan.

21 We believe that any fair reading of the statute would
22 be that that is all that is required, but as I said to Your
23 Honor, there are phrases here and there in the -- in the Act
24 that refer to zero pension cuts. So what we were envisioning,
25 Your Honor, is that someone who wants to make a case that we

1 have to do more than just eliminate the monthly benefit
2 modification, they have to go through the statute and make a
3 case out of these bits and phrases that we don't think could
4 possibly be meritorious. But that's what they have to do.

5 Our -- we didn't think that our telling them the
6 obvious, that the plain meaning is what we're saying it is,
7 because that's what the statute says, would tell them anything
8 they don't know. But given Your Honor's question, we can
9 certainly fix that if Your Honor would prefer.

10 THE COURT: Well, considering that you are planning
11 to send this to committees, but you are sending it to a bunch
12 of -- not a bunch, but a huge number of individuals who
13 probably haven't memorized the language of the statute, and so
14 if you are looking for me to make an interpretive
15 determination regarding the meaning of the statutory language,
16 it seems to me that at a minimum you need to propose some sort
17 of legal conclusion as to the -- as to why the references to
18 zero benefits means something. You don't alter the meaning of
19 the express condition of removing the monthly benefit change,
20 so --

21 MR. BIENENSTOCK: Your Honor, just -- go ahead. I'm
22 sorry.

23 THE COURT: No. Please go on, Mr. Bienenstock.

24 MR. BIENENSTOCK: I wanted to be clear on my
25 understanding of what Your Honor just said, because what I'm

1 not clear about is whether Your Honor was suggesting or
2 directing us to articulate our proposed additions to the Order
3 in a way that spells out the rationale, or whether we
4 separately, in the notice we'll be sending to everyone, simply
5 spend a few paragraphs or a few sentences explaining the
6 rationale.

7 THE COURT: Well, now you are proposing -- we have a
8 number of different pieces here. You ultimately are proposing
9 an order for me to sign. You've also served proposed findings
10 of fact and conclusions of law, and in order for me to make a
11 legal conclusion that is ultimately resting on an
12 interpretation of the new statute, I need to have some legal
13 and textual rationale for that, given -- rationale for
14 understanding that this is a matter that is in controversy and
15 susceptible to -- and that needs to be resolved.

16 Also, then, if I'm going to grant your application,
17 include whatever language it is you are looking for in your
18 order, and, you know -- and also, I'm sure everybody
19 recognizes that this is a topic that was just put to me, and I
20 did not have an opportunity to think in advance about how to
21 design this process; but it does seem to me that both the
22 Court and the parties to whom notice and the opportunity to
23 object is being given should have -- and I am directing you to
24 provide, whether it is by a supplementation of your proposed
25 conclusions of law and findings of fact, in addition to the

1 request for the ruling and some excerpting of this new
2 language in the notice to the employees and retirees, or by
3 some other means that you'll describe to me, the employees and
4 retirees need to have context and an explanation of your
5 argument as to why it is appropriate for the Court to
6 interpret the statute in this particular way.

7 MR. BIENENSTOCK: Okay. Your Honor, the good news is
8 there is a very short list of sentences and phrases in the new
9 statute that go one way or the other on this, so it's really
10 not a problem for us to revise the notice that we'll propose
11 to send to everyone to include that, to explain what there is,
12 and why we read it the way we do, and why we're asking for
13 what we're asking for.

14 So my comments, if we haven't filed it yet -- well,
15 if we have filed it, we'll file a revised urgent motion. If
16 we haven't filed it yet, we'll do what I just said before we
17 file it to provide the rationale that Your Honor is referring
18 to.

19 THE COURT: Thank you. I will also ask that you file
20 an English version of the statute, because we have not been
21 able to track one down through our public sources.

22 MR. BIENENSTOCK: Sure. Sure, Your Honor.

23 THE COURT: Okay. What is the timetable that you are
24 proposing for the urgent motion, for objections in response to
25 the notice when it does go out, and reply?

1 MR. BIENENSTOCK: I think we'll be able to revise the
2 urgent motion and get it on file today. Depending on how long
3 this hearing goes, it may be this evening. It may be earlier
4 if it ends earlier.

5 I think the way we've set it up was we were leaving
6 it to the Court to say when people needed to respond to the
7 urgent motion, and we have found out from Prime Clerk the
8 number of days notice they needed to get things advertised and
9 all, so that was built into the timing. The way it worked out
10 at the end of the day was that objections to the requested
11 relief would have to be filed by November 14, and replies to
12 those objections by I think the 18th.

13 THE COURT: Thank you.

14 So I'll call on Mr. Hein now.

15 MR. HEIN: Thank you, Your Honor. This is Peter
16 Hein. Can you hear me?

17 THE COURT: Yes, I can. Thank you.

18 MR. HEIN: Great. So I just am reacting to what I'm
19 hearing as well, but I had several concerns. I just wanted
20 to, frankly, put them as a matter of record.

21 I have not -- I have been able to find on the
22 internet what I think may be the statute. I'm not sure.
23 There is English at the end of the Spanish statute. I don't
24 know if it's official, but this phrase is an extremely
25 material point from the point of view of individuals like me

1 who are going to be getting these 12 fragments. And given our
2 relatively modest individual holdings, whereas a major
3 institution can deal with the uncertainty by selling pretty
4 promptly after the effective date, and has liquidity, the
5 Puerto Rico investors get one bond, rather than 12 splitters,
6 they can sell with some element of liquidity, retail investors
7 like me in the 50 states are basically going to be stuck with
8 these fragments, or else have to incur significant losses on
9 top of our existing losses just to sell in the illiquid market
10 for bits and pieces and fragments of splinter bonds.

11 So I think I have to look at this from the point of
12 view of where is this going to stand over 25 or 30 years? Is
13 Puerto Rico going to stand behind its obligations? Is someone
14 going to try to come up with some way of getting out of it?

15 And, you know, I'm in a position where right now we
16 have a constitutional provision that gives the bondholders, GO
17 bondholders priority. That's now being effectively abrogated.
18 They're seeking to preempt state statutes that provide for the
19 first payment of GO bonds.

20 I would certainly contend that the GO bondholders
21 like me have a security position, but even if one disputes
22 that, what I'm now faced with is a situation where I'm going
23 to have fragments of bond. I can't sell them. And then I'm
24 going to be at the mercy of someone coming up five years from
25 now, ten years from now, don't want to pay, can't pay, well, I

1 | didn't get notice -- based on the past issues with Prime Clerk
2 | getting notices out, there's no reason to think that everyone
3 | who's entitled to notice is going to get it.

4 | Frankly, it would be my position that retail
5 | investors, who I think are most at risk in this, retail
6 | investors ought to be given a notice that lays this out and be
7 | given a chance to revote. So I wanted to be on record with my
8 | objections and concerns. And I think, to be more specific, I
9 | have to wait to see what is actually filed by way of an
10 | amended plan, but I do have very serious concerns.

11 | And when I -- as I read this statute, I'm looking at
12 | Article 605, Article 603 on severability. Mr. Bienenstock
13 | referred to these positions. Personally, I find them
14 | extremely troubling, and I think, Your Honor, that thousands
15 | of individual unrepresented retail investors are being put in
16 | a position where they are going to be most effected in terms
17 | of their future payment streams over the next 25 or 30 years
18 | by what occurs here.

19 | And I just, again, want to register my objection.
20 | Thank you.

21 | THE COURT: Thank you.

22 | Mr. Bienenstock, will you respond?

23 | MR. BIENENSTOCK: Thank you, Your Honor.

24 | Well, first, the Oversight Board's goal on behalf of
25 | the debtors is to eliminate the very risk that Mr. Hein is

1 referring to. That's why rather than simply go forward with
2 the confirmation hearing, we wanted to give this notice so
3 that everyone would be bound, and that's also why, taking into
4 account timing, and logistics, and such that we're asking in
5 our urgent motion for permission to use publication notice as
6 well, which should cover everyone.

7 So I think that that addresses Mr. Hein's concerns as
8 best as they can be addressed, and I think it's actually a
9 pretty good way of addressing them. I obviously don't know if
10 he would agree.

11 THE COURT: I think Mr. --

12 MR. BIENENSTOCK: I think his concerns regarded --

13 THE COURT: I hear Mr. Hein saying that if this
14 doesn't work, and perhaps even if it does, but -- there's
15 litigation down the road, the consideration being provided
16 under the Plan for the retail investors has become materially
17 more uncertain; and so he is arguing that I should stop the
18 presses and allow a revote, or at least saying that he might
19 make such a request.

20 Is there anything that you want to say about that
21 aspect of his comments at this point?

22 MR. BIENENSTOCK: Sure, Your Honor. To be entitled
23 to revote, the Plan has to be changed in a material and
24 adverse manner in respect of the entity wanting to revote, and
25 the Plan is not being changed at all in a material and adverse

1 manner. The retail investors and all of the GO bondholders
2 are receiving exactly what the Plan has said all along they
3 will receive.

4 And actually, you know, as Mr. Hein probably knows,
5 the Oversight Board has believed all along we can do a Plan
6 without legislation, but it was to further accommodate holders
7 of the GO debt that we sought legislative approval. And we
8 got it, based on satisfying this condition. So it would be
9 quite, you know -- it would be really turning things upside
10 down to now say that we got what they wanted, but now they
11 think there's more risk and they want a revote.

12 I mean, that's the opposite of what the dialogue
13 between the bondholders and the debtors has been all this time
14 that the Plan was negotiated.

15 THE COURT: Thank you.

16 Mr. Rosen has his hand up.

17 MR. ROSEN: Thank you, Your Honor.

18 I just would like to add that the argument that
19 Mr. Hein makes regarding fragmentation of recoveries is the
20 same argument that the Court heard and overruled in connection
21 with the COFINA Plan. Mr. Hein and all retail people are
22 getting the same swath, if you will -- or swatch of recoveries
23 that everyone else is, and it's because of the need to give
24 those sorts of recoveries across the entire platform of
25 creditors, and that they be treated fairly, that there are

1 multiple bonds being issued.

2 You know, I understand his concern about getting
3 smaller pieces, Your Honor, but he's being treated exactly the
4 same as all other creditors. Thank you, Your Honor.

5 THE COURT: Thank you, Mr. Rosen.

6 Let's go on -- Mr. Bienenstock, unless you have more
7 on number five, in which I'm looking forward to your filing,
8 shall we go on to three and -- well, number three, which is
9 the proposed confirmation order, is that subsumed in
10 Mr. Rosen's presentation regarding the filing of the Eighth
11 Amended Plan and related documents?

12 MR. ROSEN: It is, Your Honor. We'll do it all at
13 the same time.

14 THE COURT: All right. Thank you. So we have
15 covered two, three, and five.

16 Four is objections to deposition designations. I
17 don't recall that those objections or any counter designations
18 have been filed, so would somebody set me straight as to what
19 the status of filings is at this point?

20 MR. FIRESTEIN: Yes, Your Honor. This is Michael
21 Firestein of Proskauer on behalf of the Oversight Board.

22 If I might, I think I -- your remark is exactly the
23 reason why we wanted to afford some clarity to this. May I
24 proceed?

25 THE COURT: Yes, please.

1 MR. FIRESTEIN: So I think pursuant to the -- again,
2 Michael Firestein of Proskauer on behalf of the Oversight
3 Board. Our interpretation of the procedures order was that
4 everybody, to the extent they had any deposition designations,
5 the responding parties or other parties needed to serve
6 objections to those by Saturday evening, which people did. I
7 don't recall -- or at least I don't recall seeing one, that
8 there was a mechanism for resolving those objections, and so
9 that's the reason why this item is on the Agenda.

10 And to avoid troubling the Court relative to this, I
11 will tell you that of the designations that were served, I
12 believe the only objections that were raised were ones by the
13 Oversight Board. And even with respect to those, they were
14 quite modest. There were a handful to a couple, and mostly
15 relating to completeness and adding a few lines one way or
16 another. But I'm not asking the Court to take my word for
17 that.

18 The purpose of this was to establish a mechanism, and
19 I can think of two ways to do this. One is to create some
20 sort of -- because the Court does not have the deposition
21 transcripts on which to be able to make any ruling relative to
22 the objections, so there are two ways to do this. I'll
23 recommend, if I could, just on my own client's behalf, the
24 second way, which is if and when that testimony, if it's
25 necessary, is offered into evidence, that to the extent that

1 | there is an objection that needs to be resolved, it be done
2 | that way, because I believe each of the witnesses, perhaps
3 | with one exception, is already slated to testify at the
4 | confirmation trial, and will be available for
5 | cross-examination by the party -- I think it's the DRA parties
6 | who have essentially offered up the designations. So that
7 | might be the easier way to do this.

8 | As an alternative, we can provide those designations
9 | and the limited objections with the transcripts to the Court
10 | in advance. I mean at some time this week, or when the Court,
11 | you know, directs that to be the case, but they may not be
12 | necessary to be ruled upon, again, because it may not be
13 | something that is actually ultimately offered by the
14 | proffering party, because those witnesses will be available
15 | for examination, and the transcripts will be used for whatever
16 | their usual purposes would be.

17 | So I'll stop and just ask the Court what the Court's
18 | preference is on that score.

19 | THE COURT: Well, my preference would be the first
20 | method, because, as you say, it may be that the witness will
21 | appear for cross-examination, and it may not be necessary
22 | to -- may or may not be necessary to use the designated
23 | deposition excerpt.

24 | So what I will require is that to the extent it is
25 | anticipated that there will be a use of and controversy

1 regarding the deposition designations as to a witness, the
2 notice that is due at two o'clock the day before as to
3 witnesses to be examined should flag the issue; and the
4 material should be provided to the Court in electronic form
5 along with that notice as to what the designations and
6 objections or counter designations are, and the parties'
7 positions, and the deposition to which the Court would need to
8 refer in resolving it. Then, if necessary, we can talk about
9 it the next day.

10 Does that seem reasonably efficient? Mr. Firestein,
11 you're muted. I didn't hear anything you said.

12 MR. FIRESTEIN: I said, may I respond?

13 THE COURT: Yes, please.

14 MR. FIRESTEIN: Thank you.

15 I think that that is perfectly fine. We'll work with
16 -- I believe it's just the DRA parties who are involved with
17 us relative to this. I don't imagine there will be any
18 complications.

19 And are the existing procedures orders -- I just
20 don't have them committed to memory. Do they provide for this
21 mechanism already, so there's no need for a further order, and
22 we'll just subsume this deposition issue within whatever those
23 day-before evidentiary issues might be involved?

24 THE COURT: I don't think that the procedures orders
25 specifically address this, and so I am making this direction

1 on the record, but we will also file a supplement to the
2 procedures order covering this.

3 MR. FIRESTEIN: Very well. That's fine. Thank you,
4 Your Honor. That was the extent of the issue.

5 THE COURT: Thank you.

6 All right. The next item is the parties requested
7 time -- so sorry. Just one moment. We thought we saw a hand,
8 but now we don't. Oh, we do now. Mr. Mintz and Mr. Cepeda.
9 So first, Mr. Mintz?

10 MR. MINTZ: I think Mr. Cepeda might be responding on
11 the prior topic, so it might make sense for him to go first.

12 THE COURT: Okay. Mr. Cepeda.

13 MR. CEPEDA: Sure, Your Honor. Thank you. Alejandro
14 Cepeda on behalf of AmeriNational. I just want to say I agree
15 with Your Honor's suggested procedure for dealing with the
16 deposition designations. Thank you.

17 THE COURT: Thank you, Mr. Cepeda.

18 Mr. Mintz?

19 MR. MINTZ: Yes. So I'm not a hundred percent sure
20 what's left to cover in the process, but I just want to make
21 sure, as we move on, that we come back to my questions
22 regarding how to proceed with the new testimony. And maybe
23 that's coming up here in the questions about
24 cross-examination, but I know we were moving on. And we've
25 covered some of those topics already, so I had a handful of

1 questions. I can ask them now or I can wait. I just didn't
2 want to move past them.

3 THE COURT: All right. So this is regarding your
4 comment that had anticipated the Oversight Board's oral notice
5 today that, in connection with the Eighth Amended Plan, it was
6 likely to serve additional or supplemental declarations and
7 factual material reflecting the change in the Plan and the
8 economic changes resulting from the elimination of the monthly
9 benefit; is that correct?

10 MR. MINTZ: That is correct, Your Honor. To the
11 extent it impacts feasibility, which we've heard already, and
12 potentially best interest arguments, and other financial
13 arguments, our witnesses will also have testimony that they
14 need to consider. So I can't quite tell where we are in the
15 process, but we want to understand what's going to be provided
16 to us, when, and then obviously what's expected of us, and,
17 additionally, whether we'll have the opportunity to request
18 additional documents to the extent that's relevant, when, and
19 how that might work.

20 THE COURT: I think the best way to deal with this is
21 to require the Oversight Board and the DRA parties to begin
22 meeting and conferring once the information is filed, and to
23 file what I hope will be a joint proposal as to deadlines and
24 procedures on Friday.

25 Mr. Rosen, is it -- or, yes, Mr. Rosen, can you give

1 something of an advanced preview picture to Mr. Mintz and
2 colleagues before midnight Wednesday, so that these
3 discussions can be as informed as possible under the
4 circumstances, and we can make use of the time in as efficient
5 a way as possible before the scheduled commencement of the
6 hearing?

7 MR. ROSEN: Your Honor, I think we'll be able to set
8 up a call with him. Yes, we will do that.

9 THE COURT: All right. So you'll set up a call with
10 him before you file?

11 MR. ROSEN: Yes, Your Honor.

12 THE COURT: Then promptly after you've filed, when
13 he's in more of a position to know what you've done, you will
14 meet and confer in an effort to come up with a joint proposal
15 to address any issues regarding additional evidence or
16 discovery?

17 MR. ROSEN: Yes, Your Honor. We will do that.

18 THE COURT: Mr. Mintz, does that satisfy you as a
19 starting point of the procedure?

20 MR. MINTZ: Yes, Your Honor. In the short term of
21 course we're prepared to sit with Mr. Rosen and his team, and
22 follow that with a meet and confer. We'll obviously want to
23 work through, as I said, the when and how we'll get
24 information, and then the opportunity to take any further
25 discovery if it's applicable. And perhaps Mr. Rosen will

1 address all that with whatever they provide to us right up
2 front.

3 THE COURT: Very good. You all, of course, know
4 where to find Judge Dein and me.

5 MR. MINTZ: We do, Your Honor. Thank you.

6 THE COURT: Okay. Thank you.

7 All right. So the next Agenda item, which is
8 denominated no. 6, is the parties' requested time for
9 cross-examination, and a summary chart was provided as part of
10 the -- as part of the Agenda. So of course you would have
11 that timing. Any anticipated redirect will also affect timing
12 of the actual presentation of evidence. So what precisely is
13 the issue that the Oversight Board would like me to address
14 now?

15 MR. MERVIS: Good afternoon, Your Honor. Michael
16 Mervis from Proskauer Rose for the Oversight Board.

17 The reason that we put this on the Agenda was simply
18 to give the Court an opportunity, if the Court had questions
19 about any of the parties' time estimates, that those could be
20 raised now, and we could meet and confer in response to those
21 questions. But, otherwise, that was the only real reason for
22 putting this on the Agenda.

23 THE COURT: All right. There's someone who has a
24 hand up who I'll call in a moment. I do not have particular
25 questions about the request at this point except to say that,

1 | you know, to the extent anyone begins to think that their
2 | request may be too short or too long, I urge the parties to
3 | reach out and meet and confer, so that we don't have big
4 | surprises the day before, as the report as to expected
5 | evidence on a given day is being prepared.

6 | I'll say again more directly what I alluded to a
7 | minute ago. The two o'clock notice to the Court as to what's
8 | expected the following trial day should anticipate any
9 | expected redirect and recross, as well as estimating what we
10 | can get through in a given day. So communications between the
11 | parties concerned will be necessary to facilitate smooth
12 | conduct of the trial.

13 | Now, let me call on Mr. Capdevila for Finca Matilde.

14 |
15 | MR. CAPDEVILA: Yes. Good afternoon. For the
16 | record, Eduardo Capdevila on behalf of Finca Matilde, Inc.

17 | THE COURT: Good afternoon.

18 | MR. CAPDEVILA: Yes. I would like to address the
19 | Court regarding an issue that is not directly related to
20 | cross-examination, but it is related and it will affect the
21 | timeframe of the Court, because I believe there are two
22 | certain issues that remain lingering as to the logistics of
23 | the confirmation hearing, if I may?

24 | THE COURT: Yes, you may.

25 | MR. CAPDEVILA: Well, first, we would like to point

1 out that while counsel for the Board approached us as to
2 opening and closing arguments, our -- there are several
3 objectors to the Plan, such as still my client, that our
4 objections are not procedural, do not require evidence, so
5 it's more of argumentation. And I would like to know if the
6 Court is going to hear that like on opening and give space for
7 counter arguments, or if that's going to be at closing, or
8 perhaps at a specific date? I don't know what's the Court's
9 position on that.

10 And that brings us also to a second point, which I
11 think is very important, which is regarding the interventions
12 for the Department of Justice on the constitutional
13 challenges. Pursuant to Rule 5.1(c), the United States -- the
14 Attorney General has 60 days to appear, and according to the
15 rule, the Court cannot -- may not, I'm sorry, enter the
16 confirmation order unless the Attorney General has waived that
17 right.

18 That time has not been shortened, and from the date
19 it would -- Finca Matilde filed its constitutional challenge,
20 which was certified by the Court already at docket 18620, the
21 United States would -- the Department of Justice would have
22 until December 18 to appear. And that's off the schedule of
23 the court.

24 So that would have an effect on the Court unless that
25 time -- the Department of Justice deadline is shortened by the

1 Court, which shortening is not -- shortening of that specific
2 term is not prohibited by Rule 90 -- 9006.

3 And those are my client's concerns on the
4 confirmation hearing and on the logistics.

5 THE COURT: Yes. Now, other than filing the
6 certification, the Court has not been in communication with
7 the Department of Justice as to any particulars of positions.
8 Has anyone from the Oversight Board or AAFAF had such a
9 communication?

10 Mr. Rosen?

11 MR. ROSEN: Yes, Your Honor. Thank you very much.

12 I don't know if Mr. Matthew Troy from the U.S.
13 Attorney's Office is on the phone, but -- or the Department of
14 Justice, but he and I did speak about that very issue on
15 Friday. He mentioned to me that they were taking it very
16 seriously.

17 There was another pleading filed, I believe, by
18 Mr. Hein on Friday that I forwarded to him. It was another
19 challenge. So they are aware of this, Your Honor. Mr. Troy
20 did say that they were looking at this and would be trying to
21 move as expeditiously as possible. I don't know of a
22 timeframe in response to what counsel just said, whether or
23 not they will do it before the December 18th date or just on
24 that date, Your Honor; but I know that they are working on
25 this issue, and it's being referred internally.

1 THE COURT: All right. Well, we will -- I think we
2 need to press ahead with what we have control over in terms of
3 making a record of the arguments that have been and will be
4 articulated, and the legal constraints on the timing of any
5 Court rulings and the intervention of the Department of
6 Justice are what they are. We will look forward to further
7 word from the Department of Justice.

8 As to the presentation of arguments that are legal in
9 nature, rather than factual, my anticipation had been that if
10 the Court would be -- considering, of course, the written
11 submissions, and then that parties making such arguments might
12 want to make some -- participate in the openings, at least to
13 the extent of outlining the contours of the argument, and how
14 it does or doesn't relate to proof expected to be received,
15 and then that the bulk of the argument would be in connection
16 with closings, again, bearing in mind that the Court will have
17 reviewed the written submissions, and so it won't be necessary
18 for counsel to tell me in detail what is in the written
19 submissions.

20 Is that acceptable, Mr. Capdevila, or do you wish to
21 request something else?

22 MR. CAPDEVILA: For the record, Eduardo Capdevila,
23 once again, for Finca Matilde. We would then request leave to
24 file a sur-reply to just -- short sur-reply as to the
25 Board's -- the Board's reply motion in regard to that issue,

1 since there will not be an exchange of, you know,
2 argumentation, cross-argumentation.

3 THE COURT: Does the Board have any objection to a
4 brief sur-reply?

5 Mr. Rosen.

6 MR. ROSEN: Sorry, Your Honor. Thank you very much.

7 With respect to your timing, Your Honor, we actually
8 agree that the time to lay these issues out before the Court
9 would be in the context of the closing arguments themselves,
10 where to the extent that there are any issues that remain
11 outstanding, we could address them, as well as counsel for
12 Finca Matilde. And we think that would be sufficient for the
13 back and forth.

14 We do not think that there is a need for further
15 briefing on this issue. The Court set out very carefully what
16 the procedures were. Our motion, Your Honor, or --
17 confirmation itself, objections, and then the reply, we do
18 not -- Your Honor, with the limited time left, we don't think
19 we should be getting involved in sur-replies or even the need
20 for us then to refile a sur-surreply. So we would think, Your
21 Honor, that this has been already fully briefed, as the Court
22 already indicated, and we'll just move forward with closing
23 arguments and addressing -- and the objections, to the extent
24 the Court has issues with them.

25 THE COURT: I see that counsel for -- that counsel

1 for Suiza and counsel for PFZ have their hands up, as well as
2 counsel for AAFAF. I should have called on Suiza and PFZ
3 before calling on the Oversight Board.

4 So, first, Mr. Gonzalez Valiente for Suiza.

5 MR. GONZALEZ VALIENTE: Good morning, Your Honor. I
6 appreciate the opportunity to address the Court. We just want
7 to join Mr. Capdevila in the request for filing a brief
8 sur-reply.

9 There is certain case law and arguments that were not
10 addressed in our opposition to the objection and the position
11 of the Board, and we would really appreciate a chance to file
12 a brief sur-reply also, Your Honor.

13 THE COURT: Thank you.

14 For PFZ, Mr. Carrion Baralt. You have to unmute,
15 sir. I can't hear you.

16 MR. CARRION BARALT: David Carrion Baralt on behalf
17 of PFZ. May it please, the Court.

18 Your Honor, we would like to join the petition of
19 both Finca Matilde and Suiza Dairy. As brother counsel just
20 mentioned, the Omnibus Reply that the fiscal -- Oversight
21 Board filed includes certain number of issues that need to be
22 addressed before the Court makes a final decision on that. So
23 we would join their petition for a short reply, sur-reply in
24 this case.

25 THE COURT: Thank you.

1 Now, Mr. Friedman.

2 MR. FRIEDMAN: Your Honor, it's Peter Friedman from
3 O'Melveny & Myers. I don't wish to be heard on sur-reply
4 issues. My comments relate to a cross-examination issue. So
5 if you'd prefer to conclude this line of it, you can come back
6 to me if that's better for the way you're flowing this
7 discussion.

8 THE COURT: Yes. It is better for me to finish with
9 the sur-replies.

10 Each of Mr. Capdevila's client, Suiza, and PFZ may
11 file a sur-reply of no more than eight double spaced pages,
12 and that may be filed by Friday, which is Friday, the 5th of
13 November.

14 MR. GONZALEZ VALIENTE: Thank you, Your Honor.
15 Attorney Gonzalez Valiente for the record.

16 MR. CAPDEVILA: Thank you, Your Honor. Eduardo
17 Capdevila on behalf of Finca Matilde.

18 MR. CARRION BARALT: Thank you, Your Honor.

19 THE COURT: Thank you.

20 I'm sorry. Mr. Rosen, you put your hand up again?

21 MR. ROSEN: I did, Your Honor. Just we obviously
22 don't -- we were responding to all of the issues that have
23 been raised initially in their objections, and to the extent
24 that they are now going to be raising something different,
25 Your Honor, I would just ask the Court if we could reserve the

1 right to respond, if necessary, in something short and sweet
2 to whatever they may be placing before the Court on Friday.

3 I don't know if it will be necessary, Your Honor, and
4 I hope that it won't be, but I just have no clue as to what
5 they're going to be doing.

6 THE COURT: Yes. Well, to the extent that new
7 matters are raised, a sur-reply is not an opportunity to open
8 new issues for discussion, and so a sur-surreply on anything
9 that was not implicated by the reply filing would not be
10 something I would entertain supplemental briefing on.

11 So you can -- your right to request the ability to
12 make a short additional submission as to anything that is
13 pertinent and within the proper scope of a reply, and to flag
14 anything you believe is not within the proper scope of a reply
15 is reserved.

16 MR. ROSEN: Thank you, Your Honor.

17 THE COURT: Thank you.

18 So, Mr. Friedman.

19 MR. FRIEDMAN: Yes, Your Honor. It's Peter Friedman
20 on behalf of AAFAF from O'Melveny & Myers.

21 Your Honor, one of the witnesses listed on the
22 cross-examination list is listed as an AAFAF witness, Tim
23 Ahlberg. We're just -- we don't know exactly what to do with
24 that. We did not submit a declaration for Mr. Ahlberg.
25 Mr. Ahlberg was listed by the Monolines as a witness. They

1 did not submit a declaration or a witness statement from him.
2 So, you know, we certainly weren't intending on making
3 Mr. Ahlberg available.

4 THE COURT: Mr. Friedman, you've frozen. I don't
5 know if you can hear me. Let's wait a minute to see if Mr. --
6 Okay. Mr. Friedman, you're back. You had frozen for a
7 minute.

8 Mr. FRIEDMAN: Thank you. Sorry, Your Honor.

9 So we were not intending on making Mr. Ahlberg
10 available, because he has not been tendered as a witness by
11 any party. You may recall that he provided declarations in
12 connection with the Lift Stay Motion and the summary judgment
13 motions, which -- deposition testimony, as well as a
14 declaration in connection with the original Lift Stay Motion.
15 So --

16 THE COURT: Mr. Friedman, may I interrupt you? I
17 think what I'd like to do, since it's apparently DRA that had
18 listed a desire to cross-examine Mr. Ahlberg, as to whom no
19 declaration has been tendered, I'd ask that counsel for DRA
20 come on and explain what they have in mind, or whether in the
21 absence of a declaration, they would no longer be seeking to
22 cross-examine Mr. Ahlberg.

23 MR. GARCIA SOLA: Your Honor?

24 THE COURT: Yes.

25 MR. GARCIA SOLA: This is Mr. Garcia Sola. Can you

1 hear me?

2 THE COURT: Yes. Good afternoon, Mr. Garcia Sola.

3 MR. GARCIA SOLA: Good afternoon.

4 If I may just speak to the declaration. I don't know
5 whether Mr. Friedman is aware, but the declaration is
6 something that we were working on together with some other
7 attorneys at AAFAF. My recollection is that it was Ashley.
8 And we agreed to a stipulation, and the declaration was
9 stipulated. I believe it wasn't just the DRA parties, but
10 also the Monolines that participated in that stipulation.

11 What we wanted was to have a declaration, which we
12 understood would be used by AAFAF for Mr. Ahlberg as part of
13 their case-in-chief, so that we could then participate in
14 cross-examination of the witness. It was something that we
15 were working on for, you know, days, if not weeks.

16 We finally arrived at a stipulated declaration, and
17 we understood that AAFAF would be submitting them to the Court
18 as their witness' declaration, so that we could then
19 cross-examine the witness. That's where we left it, Your
20 Honor.

21 MR. FRIEDMAN: Your Honor, may I be heard?

22 THE COURT: Yes. Is that -- is that Mr. Friedman?

23 MR. FRIEDMAN: Yes, Your Honor. Yes, Your Honor. I
24 just got -- that's not, at least from my perspective, what
25 happened. I believe what happened is the monolines requested

1 or listed -- if you go back and trace through it, the
2 monolines listed Mr. Ahlberg as a potential witness on the
3 initial witness disclosure deadlines. AAFAF did not. As the
4 Court knows, AAFAF is not a Plan proponent. AAFAF listed one
5 potential witness, Mr. Bacha, whose declaration has
6 subsequently been withdrawn.

7 The monolines and the DRA parties both noticed
8 Mr. Ahlberg's deposition in some capacity. He may have also
9 been a potential 30(b)(6) witness. The parties then, and my
10 colleague, Ms. Pavel, who Mr. Garcia correctly identified,
11 negotiated with both parties over the following, which was if
12 you don't wish to take a deposition of Mr. Ahlberg, we would
13 provide you with a written declaration in lieu of deposition
14 testimony.

15 No party submitted that declaration, either as an
16 exhibit or as a witness statement. AAFAF certainly didn't,
17 because, again, we're not Plan proponents, and this is not an
18 issue that is AAFAF -- dealt with AAFAF's objection. The
19 monolines opted not to. I think, and I won't speak for
20 Ms. Miller, but what I understood generally is they believed
21 ultimately the issues he might testify on were irrelevant,
22 because these were issues of law.

23 I think that's probably borne out by the Court's
24 decisions in connection with both the administrative expense
25 motion and the dismissal of the DRA adversary proceeding last

1 week, with -- the subject of Mr. Ahlberg's testimony is
2 really, can anybody tell what happened with Act 30-31
3 revenues, and sort of how do they get traced as a cash matter?
4 And so no party submitted this as a declaration.

5 To be very clear, Your Honor, AAFAF never, ever, ever
6 told anybody that it was going to submit witness testimony.
7 And that's really antithetical to the position we took in our
8 interrogatory responses and requests for admission, where we
9 noted on multiple occasions that we were not Plan proponents
10 or not a party that intended to -- you know, this was really
11 Board -- this would be something the Board would be
12 submitting, if anybody, or this kind of testimony would be
13 something that -- the Board is the debtors' Plan proponent.
14 It would be putting forward, if anybody.

15 And I think I -- certainly the Board didn't elect to
16 do that. And, again, the other party that was negotiating
17 with us in order to avoid a deposition with Mr. Ahlberg, the
18 monolines opted not to submit that testimony. So from our
19 perspective, with no party having listed Mr. Ahlberg as a
20 witness, and his declaration not being submitted, we don't
21 believe we should be required to bring Mr. Ahlberg, or have
22 him subject to cross-examination.

23 THE COURT: So, thank you, Mr. Friedman.

24 Ms. Miller has her hand raised. I will hear her
25 briefly. Then we will have our ten-minute break. I'm just

1 going to encourage Mr. Garcia to confer off-line with
2 Mr. Friedman and Ms. Miller, to the extent he believes there
3 is any commitment that was made to him or his client, and, you
4 know, ultimately you all know how to reach out to the Court if
5 there is a dispute that you believe is appropriate for
6 resolution by the Court.

7 So, Ms. Miller, do you -- I don't see your hand
8 anymore. If you wish to speak --

9 MS. MILLER: Your Honor, Atara Miller from Milbank on
10 behalf of Ambac. I just wanted to -- consistent with what
11 Mr. Friedman described, you know, we had been negotiating, as
12 I believe the DRA parties were as well, with AAFAF on a
13 declaration for Mr. Ahlberg.

14 Frankly, from our perspective, Mr. Ahlberg's
15 testimony was principally to establish certain documents and
16 records as business records, and the monolines decided that we
17 felt the issues could clearly be decided as a matter of law.
18 We did not need to rely on extrinsic evidence that needed the
19 business record, support, consistent now with Your Honor's
20 decision.

21 And so in deciding that, we never submitted the
22 declaration, which had we wanted to proffer Mr. Ahlberg as a
23 witness consistent with the initial witness list, we would
24 have filed that declaration, which was provided to us by AAFAF
25 and finalized before the deadline for the filing of witness

1 | declarations. So the monolines have no intent at this point
2 | of offering Mr. Ahlberg as a witness.

3 | THE COURT: Thank you for making that clear.

4 | So we will now take our afternoon break. Please be
5 | prepared to proceed at 3:45. I believe that the people on the
6 | AT&T line should disconnect and call back in. Thank you.

7 | (At 3:29 PM, recess taken.)

8 | (At 3:42 PM, proceedings reconvened.)

9 | THE COURT: Good afternoon. There are just a few
10 | further items that I believe should be addressed in connection
11 | with today's conference. The first is the matter of witness
12 | -- we'll call it sequestration, which I don't anticipate the
13 | need for, in connection with this Zoom hearing, but does
14 | anyone intending to examine a witness believe that some sort
15 | of sequestration is necessary?

16 | Oh, I see that Mr. Garcia Sola has his hand up, so
17 | let me call on him.

18 | MR. GARCIA SOLA: Yes, Your Honor. I just wanted to
19 | report back to you on my conversation with Mr. Friedman before
20 | the break.

21 | THE COURT: Yes. Yes.

22 | MR. GARCIA SOLA: We had a conversation about the
23 | issue of the declaration of Mr. Ahlberg. You know, he asked
24 | me to speak with the monolines and also with the FOMB. I
25 | didn't have the time to do that over the break, but what we're

1 | trying to do is not to bring any kind of dispute over this to
2 | the Court.

3 | So if we can resolve it, which I hope to be able to
4 | resolve it either today or by tomorrow morning, we will be
5 | informing, you know, both Mr. Friedman and also the FOMB and
6 | the monolines about the resolution, and, of course, the Court.
7 | So if you can indulge a few hours until, let's say, tomorrow
8 | at noon time, we will inform the Court where we came out on
9 | the meet and confer.

10 | THE COURT: Thank you very much for that update, and
11 | for conferring with other counsel. I thank you all for your
12 | attempts to resolve this consensually.

13 | MR. GARCIA SOLA: Thank you.

14 | THE COURT: All right. So back to the witness
15 | sequestration issue. I see no hands, which is good, and so I
16 | just want to remind parties that the parties who are offering
17 | the witnesses, the proponents of the witnesses have to be
18 | prepared to inform their witnesses when it's time for them to
19 | log into Zoom, so that they can be available promptly when
20 | it's time for them to be examined.

21 | We can keep them in the waiting room until it's time
22 | for their testimony, but I do want to move smoothly from
23 | witness to witness. So do whatever you need to do to be able
24 | to communicate with the witness or with the party that had
25 | sponsored the witness, and have the witness in that party's

1 office, so that we don't have to wonder where the witness is
2 when it is time for the witness to be examined.

3 Then, with respect to interpretation, if any of the
4 witnesses who -- I'm sorry. Did someone say something?

5 (No response.)

6 THE COURT: All right. If any of the witnesses who
7 will be examined will require an interpreter, let the court
8 know through our e-mail address at least two full business
9 days in advance of when the witness will testify, because our
10 court staff will need to coordinate with counsel and the
11 certified interpreter that is being provided by the original
12 proponent of the witness to ensure that the witness and the
13 interpreter and the counsel understand how to use a -- the
14 simultaneous interpretation feature of Zoom, which will allow
15 people who need to hear in Spanish, hear in Spanish, and those
16 of us who need to hear in English, hear in English. We'll
17 move the examination along, and obviate the need for
18 sequential interpretation.

19 So then the next item is any evidence, testimony, or
20 exhibits that a party may wish to proffer under seal, and I
21 will say at this point that any party that anticipates
22 referring to or eliciting testimony concerning confidential
23 matters that the party would be requesting be kept under seal,
24 confer with the other parties involved in the presentation of
25 that evidence, presentation or production of the evidence, and

1 then raise any request to do it under seal as far in advance
2 of the segment of the trial as possible, so that I can review
3 and make any necessary ruling on the confidentiality claim,
4 and also determine whether the testimony or any argument
5 concerning it needs to occur in a break-out room.

6 I will endeavor to rule prior to the trial on any
7 outstanding sealing applications for any exhibits that the
8 parties anticipate that they will seek to admit. Given the
9 volume of exhibits that the DRA has applied to file under
10 seal, the informative motion concerning presentation of proof
11 by the DRA, any stipulations and any narrowing of proof really
12 needs to be as specific as possible as to the extent to which
13 exhibits that are the subject of sealing applications are
14 expected to be relevant to the matters that remain for trial
15 of the confirmation application, in light of the Court's
16 rulings that were issued on October 29th, and our discussion
17 this morning as to whether granular detail on Act 30-31
18 revenues and similar subjects is necessary for the record of
19 this trial, given the legal issues that are being argued.

20 So that should be addressed in the joint status
21 report, which is due on Thursday, the 4th of November. I
22 appreciate the efforts that the parties have related in the
23 course of this conference to confer and resolve any disputes
24 regarding the admissibility of evidence, and I encourage you
25 to continue in that vein.

1 In order to make sure that the openings can be
2 presented smoothly and without a lot of interruptions for
3 objections, I am directing the parties not to use or refer to
4 objected to evidence in their opening statements, and to the
5 extent that there are still objections to admissibility of
6 exhibits for testimony, the parties must -- I was going to ask
7 you for a joint status report by the Tuesday, but I realize
8 you may not know.

9 So again, by the -- in the 2:00 PM report each day
10 regarding evidence to be presented the next day, flag for the
11 Court any disputes regarding the admissibility of evidence
12 that is proposed for the next day, to the greatest extent
13 possible, and point me to or provide me with the relevant
14 documentation at that time.

15 To the extent that anyone wishes to use
16 demonstratives via screen sharing during arguments, please
17 exchange with the opposing parties for review in advance, and
18 avoid using demonstratives that you know are going to trigger
19 objections. Again, we want to use our time as efficiently as
20 possible.

21 As to formalities, I remind everyone that even though
22 this hearing is occurring virtually, participants are expected
23 to maintain the same level of professionalism and formality
24 that they would if we were all together in the courthouse in
25 San Juan. So I appreciate that today everyone has made sure

1 that they are actually centered in their cameras and can be
2 seen, and appreciate you working with us to make sure that
3 everyone can be heard. So I will expect that that will go on
4 with witnesses and counsel alike.

5 I also appreciate the use of headsets, which has, on
6 the whole, helped audio quality and reduced background noise.

7 I see that Mr. Hein has his hand up. So Mr. Hein?

8 MR. HEIN: Thank you, Your Honor. I had been
9 assuming that I would need to reply on the legal points
10 orally. Just to be candid from a time point of view, I'm not
11 sure I'm going to be able to get in a brief reply by Friday at
12 5:00, but if I was able to, and thought there were legal
13 points that would be better dealt with in a brief reply as
14 opposed to orally, would I be permitted to do that as well?

15 THE COURT: So this is a brief reply to what?

16 MR. HEIN: To the Oversight Board's Reply and
17 Memorandum, the lengthy briefs that were served several days
18 ago.

19 THE COURT: So are you speaking of a sur-reply of the
20 sort that the -- that Suiza and others requested this
21 afternoon?

22 MR. HEIN: Yes. Exactly, Your Honor.

23 THE COURT: I'm told the AT&T line is down, so we'll
24 just have to wait a minute until we can get that back up.

25 I'm sorry. We're still waiting for the AT&T line to

1 be brought back up.

2 Thank you all for your patience. There apparently is
3 a problem with AT&T, but we will go forward. The court
4 reporter is making a record here, and I will file appropriate
5 minute orders, if you will, after we're done.

6 So, Mr. Hein, with respect to your request to file a
7 brief sur-reply to the Oversight Board's reply, that request
8 is granted. You have the same deadline of Friday, November
9 5th, and the same limitation of eight double-spaced pages, and
10 I will emphasize double spaced. Not one and a half. Double
11 spaced, please.

12 MR. HEIN: Thank you.

13 THE COURT: Thank you.

14 So I have a few more mechanics that I will just go
15 over to remind everyone of regarding timing and some logistics
16 for the trial, but is there any other matter anyone wanted to
17 raise? Raise your hand now if there's anything else you want
18 to speak to.

19 Mr. Despins.

20 MR. DESPINS: Good afternoon, Your Honor.

21 THE COURT: Good afternoon.

22 MR. DESPINS: Luc Despins for the Creditors Committee
23 with Paul Hastings.

24 Your Honor, as you know, the committee reached an
25 agreement with the Board regarding the Plan the past summer,

1 and we are in support of the Plan. However, in the last two
2 days, a -- what I will describe as a plumbing mechanical issue
3 has arisen, and despite best efforts, we've been unable to
4 connect with counsel for the Oversight Board. I'm not blaming
5 them. I know they have their hands full. They have a lot of
6 things going on.

7 And so the purpose of this is just -- I didn't want
8 to leave this call without Your Honor knowing that there's a
9 potential issue, which may very well go away, and that's the
10 hope. But if not, we would need to raise that at the
11 confirmation hearing.

12 So that's the sole purpose of my intervention at this
13 time. We're going to -- we're going to renew our efforts to
14 communicate with the FOMB counsel to try to see if there is an
15 issue, in fact, and if there is an issue, whether it can be
16 resolved.

17 Thank you, Your Honor.

18 THE COURT: All right. So are you concerned about,
19 you know, the right people picking up the telephone, or are
20 you telling me that there is -- simply telling me that there
21 is a subject that could be significant that's in discussion?

22 MR. DESPINS: There have been no discussions yet. I
23 hope they'll happen, you know, very soon. I see Mr. Rosen
24 jumping in.

25 THE COURT: You need someone to pick up the

1 telephone, and Mr. Rosen has put up his hand, so let's hear
2 from Mr. Rosen.

3 MR. ROSEN: Your Honor, thank you. I put up my hand,
4 and I will pick up the telephone. Mr. Despins has tried
5 several times, and we've just been a little preoccupied with
6 some of the other pressing issues. But we will address this
7 issue in the next day, and I don't think it will be an issue
8 for the Court.

9 THE COURT: Thank you, Mr. Rosen. Thank you,
10 Mr. Despins.

11 MR. DESPINS: Thank you. Thank you.

12 THE COURT: I don't see any other hands raised, and
13 so this concludes the conference Agenda for this conference.
14 The next scheduled hearing is the commencement of the Plan
15 Confirmation Hearing, which is scheduled to begin next Monday,
16 November 8th, 2021, at 9:30 AM Atlantic Standard Time, which
17 is 8:30 AM Eastern Standard Time, because the mainland clocks
18 change on Saturday night, so please remember that. If you're
19 on the mainland, it's 8:30 Eastern, and the times that
20 correspond to that across the country.

21 As with today's conference, the hearing will occur
22 over a combination of Zoom and a listen-only telephone line.
23 The Procedures Order is at Docket Entry No. 18877-1 in Case
24 No. 17-3283.

25 The first day of the hearing will be November 8th.

1 The hearing will then continue as necessary on November 9th
2 and 10th, the 12th, the 15th through 18th, and the 22nd and
3 23rd of November.

4 The Court will circulate the Zoom invitation link to
5 people who are properly registered to participate by Zoom
6 daily prior to each day of the hearing. In the event that
7 registrants don't see the invitation sent to their inboxes,
8 all registrants are reminded to check their spam folders or
9 other applicable subfolders before contacting the Court.

10 I have already told you about the effect of the end
11 of daylight savings time, but I'll remind you again. 9:30
12 Atlantic Standard will be 8:30 Eastern Standard.

13 The Zoom participants for the trial should log on 30
14 minutes prior to the start time, use the proper naming
15 convention, and make sure that everyone is ready by the start
16 time.

17 Mr. Rosen, your hand is up.

18 MR. ROSEN: Yes, Your Honor. I apologize for one
19 last question. I know Your Honor, in a prior order, you had
20 indicated that day one would be limited to opening statements;
21 day two would be limited to your receipt of certain statements
22 made by on-island pro se people. I just want to be clear,
23 Your Honor, because we want to coordinate with our witnesses.

24 In the event that opening statements do not go the
25 full six hours that you have allotted, is it your intention to

1 limit day one only to the opening statements anyway, so that
2 we don't need to have our witnesses available on day one?

3 THE COURT: That is my intention.

4 MR. ROSEN: Okay.

5 THE COURT: Unless you tell me that there's a
6 possibility that opening statements are only going to be two
7 hours or three hours, in which case I would revisit that.

8 MR. ROSEN: At this point, I don't know, Your Honor.
9 I think we're still waiting for some information from some
10 people. So I think at this point we'll just say we'll start
11 with the witnesses available then for Wednesday morning?

12 THE COURT: Yes. I think that is the most prudent
13 path. If for any reason you want to request a change in that
14 and have witness testimony start on Monday, let me know sooner
15 rather than later.

16 MR. ROSEN: Thank you, Your Honor.

17 THE COURT: I'm sure we would be able to accommodate
18 that, unless you tell me at five o'clock on Sunday afternoon,
19 in which case we would not.

20 MR. ROSEN: Thank you, Your Honor.

21 THE COURT: So on each day, the Court will generally
22 provide a morning break of ten minutes and an afternoon break
23 of 20 minutes -- I'm sorry, of ten minutes. So morning break,
24 afternoon break are ten minutes, and then there will be a
25 lunch break, which will run between an hour and an hour and 20

1 minutes, possibly longer on at least one day as the Court's
2 schedule may require.

3 The Court will be entering an order shortly that
4 invites members of the public to register for the opportunity
5 to address the Court in person at the Clemente Ruiz Nazario
6 United States Courthouse in San Juan on Tuesday, November 9th.
7 An entire trial day has been reserved for the important
8 purpose of hearing the views and opinions of members of the
9 public who will be affected if the proposed Plan is confirmed
10 by the Court.

11 Each speaker will be given ten minutes to provide
12 their views, and that will allow 25 people selected by lottery
13 to appear and provide remarks. The ten minutes are inclusive
14 of any time needed for language interpretation, which will be
15 provided by the court.

16 And the Court expects that at a minimum, Counsel for
17 the Oversight Board, AAFAF, the official committees, and the
18 principal PSA participants to log into Zoom with their cameras
19 on to observe the entirety of the public testimony, so at
20 least one representative of each of those constituencies.

21 As always, I thank the Court staff in Puerto Rico,
22 Boston, and New York, and I thank counsel for all of their
23 work and their participation in the conference today. Stay
24 safe and keep well, everyone. I will look forward to the
25 further submissions later this week, and to the commencement

1 of the hearing next Monday morning.

2 We are adjourned.

3 (At 4:08 PM, proceedings concluded.)

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1 U.S. DISTRICT COURT)
2 DISTRICT OF PUERTO RICO)

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4 I certify that this transcript consisting of 162 pages is
5 a true and accurate transcription to the best of my ability of
6 the proceedings in this case before the Honorable United
7 States District Court Judge Laura Taylor Swain, and the
8 Honorable United States Magistrate Judge Judith Gail Dein on
9 November 1, 2021.

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13 S/ Amy Walker

14 Amy Walker, CSR 3799

15 Official Court Reporter

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